United States Court of Appeals

for the Second Circuit

APPENDIX

74-1550

74-1550

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CARMINE TRAMUNTI, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX
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UNITED STATES COURT OF APPEALS
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UNITED STATES OF AMERICA
vs. 73 Cr. 1099
CARMINE TRAMUNTI, et al.

New York, February 26, 1974;
10.00 A.M.

Trial resumed.

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(In open court; jury not present.)

THE COURT: Let's square away the logistics once again.

Mr. Rosenberg, you asked for a Wade hearing in connection with the identification of your client.

MR. ROSENBERG: Yes.

THE COURT: I gather you are not going to demand that it be done today.

MR. ROSENBERG: I think I would have liked to have done it before the defense started.

THE COURT: I know, but our problem is today is Shrove Tuesday. You know what that is?

MR. ROSENBERG: No.

THE COURT: It's Mardi Gras.

MR. ROSENBERG: All right.

THE COURT: There are two agents involved. One of them is in New Orleans where Mardi Gras makes a dif-

ference. Today is a holiday down there. I wish it was a holiday up here.

MR. ROSENBERG: We would be working anyway.

THE COURT: We would be working anyway, you are right.

The other agent is testifying in Washington, D.C. I have instructed the U.S. Attorney to have him up here as fast as possible. Hopefully we will be able to do it tomorrow afternoon. All right?

MR.ROSENBERG: Yes,sir. Thank you.

THE COURT: I have to say -- I will be very honest about it -- I am not terribly sure that you made out a case for a Wade hearing. However, I am not terribly sure what a case for a Wade hearing is, because I have no instructions whatsoever from the Court of Appeals or from the Supreme Court. I would appreciate it if they had the opportunity at some point in the future to please instruct district judges like myself as to when we should do these things.

Now, a motion was made by Mr. Pollak in connection with the Wade hearing to strike the identification of Salley by the witness Provitera. That motion is denied.

Two motions were made yesterday by Mr. Herbert Siegal. One is for a judgment of acquittal on Count 27.

That motion is granted. The other one is a motion for a judgment of acquittal on Count 1, the conspiracy count. That motion is denied.

The motions on behalf of the defendants Tolopka, Mamone and Salley for judgments of acquittal, which were argued yesterday, are also denied.

The omnibus motion which I gave to all other counsel on behalf of all of the defendants, in which I had suggested that they had made all of the brilliant arguments which they possible could, is also denied.

There was a motion made by Mrs. Rosner yesterday in connection with the fact that the conspiracy count, Count 1, charges one conspiracy where it is her contention that there were at least two or possibly three conspiracies involved and therefore the indictment, Count 1, be dismissed on that ground. That motion is denied.

Now, to the best of my knowledge, that takes care of all of the outstanding motions.

Mr. Warner, let me see if I can guess what you are going to say.

MR. WARNER: It's supplementary to what I had said previously, your Honor.

THE COURT: All right, go ahead, supplement.

MR. WARNER: First, your Honor, with respect to

overt act No. 7, to which there was no testimony whatsoever I would assume that when the indictment goes to the jury that that will not be included, and I would so move.

As far as the count in which your Honor granted Mr. Siegal's motion concerning Mr. Tramunti, Count 27, concerning a mixing session in about May of 1973, I would also move as regards the defendant Ceriale that that count be dismissed.

THE COURT: 27?

MR. WARNER: I think it was 27.

THE COURT: I don't believe that Ceriale is named in 27.

MR. WARNER: He is, your Honor.

THE COURT: Let me see the indictment.

MR. CURRAN: Your Honor --

THE COURT: Let me just take a look.

MR. CURRAN: Your Honor, the government consents to the dismissal of Count 27 altogether.

THE COURT: Altogether?

MR. CURRAN: Yes, sir.

THE COURT: You are a winner. Count 27 is dismissed as to everybody.

You asked me about something.

MR. WARNER: I did, your Honor?

THF COURT: Yes, you did. I assume that everybody would like to know what the answer to it is.

You said you would like to have the indictment, if it goes to the jury, so altered as to delete all counts that have been dismissed, and I will mention that you are also suggesting that Count 2, which I said is not going to the jury at the beginning, also be deleted from the indictment.

MR. WARNER: And also overt acts to which there has been no testimony be deleted.

THE COURT: All right. Mr. Engel, since you have been the quartermaster for the government, and hopefully have access to some masking tape and a Xerox machine, would you b e good enough to prepare that and let me go over it.

MR. ENGEL: Yes, I will.

THE COURT: Thank you.

MR. WARNER: Just for the record, my final point concerns counts 23 and 24, which charge the defendant Ceriale with mixing sessions in July of '72 and October of '72.

I would simply respectfully recall to the Court's attention that during Mr. Stasi's direct and cross examination he testified repeatedly that he could not give specific dates as to any of the mixing sessions. If your Honor would tabulate the eight mixing sessions that he indicated beginning in mid-1970 to the end of 1970, which follow each other by a couple of months or two months or three months, depending upon his testimony, it comes out to approximately the end of 1971 or the early part of 1972, which also does not reach July or October of '72.

Finally, on my cross examination of Mr. Stasi I confronted him with his grand jury testimony as to July of '72 and October of '72. He specifically said it was a mistake and that he did not mix in '72. That is on page 741 of the trial transcript.

THE COURT: Yes. However, if you look to the testimony of the agents as to the corroboration of Stasi in various aspects, you will find that Stasi's time frame is off by a fair amount.

Now, if you believe the content of Stasi's testimony, the statement that he could not give dates, and the time frame given by the agents, you get an entirely different picture. Under those circumstances I am going to deny your motion as to those two counts.

Now, yesterday I suggested on the motions generally made at the end of the government's case I would not hear argument from each and every attorney. At the end of the entire case there are other motions to be made and at that point I will hear argument from everyone.

If you can either formally or informally direct my attention to the points that you are going to make in those arguments before that time so that, in other words, I will have a chance to go back into the transcript and look for things, I would appreciate it.

MR. FISHER: If your Honor please, I think the record should note that for the nonce I am representing Mr. Inglese as well as Mr. Christiano.

THE COURT: Mrs. Rosner I understand is involved in another courtroom in this building.

MR. FISHER: Yes, your Honor. In the former capacity I would ask the court to rule on Mrs. Rosner's motion with regard to (a) the count in the in-

dictment which she did not specify during her brief argument to your Honor yesterday for dismissal of that count.

In addition, your Honor, I ask in behalf of Mr. Inglese for the dismissal of count 14 of the indictment.

THE COURT: Is that the count that she was referring to?

MR. FISHER: No, it is a separate one. Count 14, if your Honor please, deals with that one ounce of suspected heroin which there was considerable testimony about relating to Burke, the unhappiness of the product, the confusion, and the rest. I submit on the uncontradicted testimony of the government there is insufficient proof for anyone to conclude that the substance was in fact heroin. It is clear that the ultimate recipient of that did not really believe it was, he certainly wasn't at all satisfied with the "product."

In view of the fact that there is a complete dearth of other proof, either chemological or other, to show that the substance allegedly transferred was in fact heroin, I submit the government has failed to meet the burden with regard to that count and, I respectfully

submit, as a result, the necessary inference the government would seek to be drawn with regard to the knowledge of the illegal importation, in view of the lack of direct knowledge of that crime.

In view of all of that, I respectfully submit that count 14 must be dismissed at this time.

THE COURT: All right. Your motion to dismiss count 14 is denied.

The count that Mrs. Rosner referred to yesterday was the cocaine. Which count is that?

MR. FISHER: That is count 25, your Honor.

THE COURT: Let me take a look.

Count 25 deals only, as far as I can see, with George Goutoian and Vincent D'Amico.

MR. FISHER: You are right, your Honor.

THE COURT: Mr. Phillips, do you know which count it is that Mrs. Rosner was referring to?

MR. FISHER: Your Honor, is it count 28? I know that she didn't specify yesterday, but it is my understanding --

MR. PHILLIPS: Yes, it is. It is count 28, your Honor.

THE COURT: All right. That motion is denied also.

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MR. RICHMAN: May I have just a moment, your Honor?

THE COURT: Yes, sure.

MR. RICHMAN: Your Honor earlier denied a motion of Benjamin Tolopka with relation to his applicatio yesterday. Do I understand your Honor to allow count 7 specifically, that the jury may draw an inference that it was imported, even though the amount --

THE COURT: I gather that certain matters are still coming in, a request by the government for me to take judicial notice of certain items. I don't have the request yet before me. In fact, we still have exhibits to take care of.

But yes, it is. However, this does not preclude you from giving me further enlightenment, I don't mean to preclude you at the motions at the end of the entire case, where each and every one of you will be permitted to argue. Please, if you can beforehand enlighten me even farther.

Now, Mr. Richman, I gather on the defense case that you would be starting off.

MR. RICHMAN: No, that is not correct?

MR. LOPEZ: Mr. Rosenberg.

THE COURT: I am sorry. Then you are

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second, is that it?

MR. RICHMAN: That's right, sir.

t2agta THE COURT: Between the two of you, do you expect to go the full day today?

MR. RICHMAN: Yes, sir.

MR. ROSENBERG: I am not going to be long, Judge.

THE COURT: I know.

MR. RICHMAN: I intend to be long, your Honor.

THE COURT: Do you expect to go into [illegible] tomorrow or is there a possibility?

MR. RICHMAN: There is a possibility.

THE COURT: All right. I don't know who the next defense counsel is who might be putting in a defense, but whoever it might be, please plan to have your witnesses here tomorrow morning so that if Mr. Richmond's case does not go on, we wouldn't be unduly delayed. All right?

Let us take care of the exhibits now, Mr. Curran. You mentioned you had some.

MR. CURRAN: Yes, your Honor.

They were Government's Exhibits 3, 4, 5 and 6 for identification, which were the mannite packages.

Your Honor received in evidence at the time all the other paraphernalia that was in that cardboard carton, but those particular packages were not received in evidence. We offer them in evidence now, your Honor.

THE COURT: Was that my oversight or yours?

MR. CURRAN: It was ours, I believe, your Honor, the government's.

THE COURT: All right. I assume, gentlemen that you all object to it basically on the grounds of relevancy.

MR. FISHER: Yes.

THE COURT: All right. Under the circumstances they will be received in evidence.

(Government's Exhibits 3, 4, 5 and 6 were received in evidence.)

zz MR. CURRAN: Next, your Honor, Government's Exhibit 59A for identification is a diagram on 8-1/2 x 11 yellow paper of what is Government's Exhibit 59 in evidence and we offer 59A for identification into evidence as a substitute for the diagram.

That is the blackboard diagram of the Tear Drops Bon-Soir.

THE COURT: Does anyone have any objection

to the replacement of the blackboard with a piece of paper?

MR. SIEGAL: Can we look at it?

THE COURT: Surely, absolutely. I want you to take a look at it to make sure it does look the same. It is just that it would save the clerk from tilting with the blackboard should the jury decide to see it.

MR. CURRAN: Your Honor, while defense counsel are looking at that exhibit for identification, I believe I also mentioned yesterday that your Honor, I think, had reserved decision on the government's offer into evidence of Exhibits 3549, 3549A and 3549B for identification. Those were the three handwritten note documents of the witness Barnaba.

3549 for identification was a copy of the notes turned over to defense counsel, 3549A were the original notes which correspond exactly to 3549 and 3549B for identification, if your Honor recalls, with the notes that the witness Barnaba produced. That was his copy of the original notes which he kept and retained at all times. We offered them, of course, for the limited purposes of showing the fact of the changes about which he was cross examined very extensively by defense counsel,

not for any substantive purposes.

THE COURT: All right. Mr. Curley, you have been terribly quiet. I assume you object.

MR. CURLEY: I do.

THE COURT: All right. Objection sustained.

Mr. Rosenberg, at one point you offered some 3500 material also.

MR. FISHER: I object to that offer.

THE COURT: All right. Your objection is sustained.

I strongly feel that unless it is an extraordinary circumstance, that 3500 material should not be received and it certainly should not go into the jury room. It is just adding unnecessary prejudice to the defendants which I don't believe should happen. In the extraordinary circumstance, a different rule might apply, but we haven't had an extraordinary circumstance here.

Yes, Mr. King.

MR. KING: If your Honor please, my client has requested a personal audience with you in your robing room.

THE COURT: You want it on the record?

MR. KING: At your convenience.

THE COURT: On the record of what?

MR. KING: Sir?

THE COURT: Do you want it on the record?

MR. KING: Yes.

THE COURT: All right. Let us do it right now.

I assume, Mr. Rosenberg, you are prepared to go ahead, right?

MR. ROSENBERG: Yes, sir.

THE COURT: Okay.

MR. DOWD: Your Honor, I would like to talk to fellow counsel and I may have an application for you in the robing room.

THE COURT: Absolutely, sure. I am going to talk to Mr. King and his client right now. Why don't you take that opportunity.

MR. DOWD: That is what I am going to do, Judge.

THE COURT: Okay, fine.

(In the robing room; counsel and defendant Gamba present.)

MR. KING: My client has requested me to tell you that he feels that there is a communication gap between him and me. Upon his telling me that I im-

mediately offered to resign as his attorney if he felt that I wasn't satisfactorily representing him, but he protested that that was not the reason.

Am I quoting you correctly, Mr. Gamba?

DEFENDANT GAMBA: Yes.

MR. KING: However, he said he wanted the phrase "that there is a communication gap between him and me" on the record.

Is that correct?

DEFENDANT GAMBA: Yes.

THE COURT: All right.

MR. KING: Does your Honor want to question Mr. Gamba in any way?

As a matter of fact, I have been up until 2 this morning preparing the request to charge and I have given them to my secretary to prepare for your Honor because I just learned yesterday -- I was out Friday and Saturday -- that you wanted them by tomorrow morning.

If your Honor feels or Mr. Gamba feels that I am not properly representing him, I would still want those requests to go in as part of my work.

DEFENDANT GAMBA: Excuse me. May I speak, your Honor.

THE COURT: Sure.

DEFENDANT GAMBA: I am trying to explain to Mr. King, it is nothing personal and I do not -- I want you here, I want you to go through.

MR. KING: I am hearing what you are saying.

DEFENDANT GAMBA: I appreciate everything you have done with me, I like your sincerity. As a man I think there is nothing wrong.

I would just like to state there is a serious communication gap, your Honor. We have gotten things mixed up in the past. I can cite examples if you want me to.

THE COURT: No, I don't want you to.

DEFENDANT GAMBA: All right.

THE COURT: Mr. King, I think you ought to remain as counsel for Mr. Gamba. All right?

DEFENDANT GAMBA: That's what I want.

THE COURT: Okay.

MR. KING: Thank you, Judge.

(Recess.)

(In open court; jury present.)

THE COURT: I am sure, ladies and gentlemen, when you see me come walking out after you come on into the jury box you figure that we haven't been working. We have. The difference is when it is strictly legal

matters, I generally avoid putting the robe on.

All right, Mr. Rosenberg.

MR. ROSENBERG: Your Honor, I am ready to start my defense and I call as my first witness the United States Attorney, Paul Curran, to the stand, and I ask Mr. Phillips to leave the room, your Honor, because he is going to be my second witness.

MR. CURRAN: May we approach the side bar?

MR. ROSENBERG: If your Honor please, I have a constitutional right to call any witness in my defense.

THE COURT: Absolutely.

MR. CURRAN: I didn't suggest Mr. Rosenberg didn't.

THE COURT: I am sure Mr. Curran is about ready to get on the stand.

MR. ROSENBERG: Good. Good.

THE COURT: I think I know what the problem is. I think it can be resolved very simply.

Come up both of you.

It doesn't have to be on the record. Just come up here.

(At the bench, discussion off the record.)

(In open court.)

MR. CURRAN: Mr. Rosenberg, might we come up?

Your Honor, may we approach the bench?

THE COURT: Yes, sure.

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(At the bench, discussion off the record.)

(At the side bar.)

THE COURT: Okay, go ahead.

MR. CURRAN: Your Honor, we have had a brief conversation or conference off the record.

I assume Mr. Rosenberg wants to go to the supplemental bill of particulars prepared by Mr. Phillips and this has to do with a John Doe, also know as Georgie.

I have two points:

The first is that the supplemental bill of particulars is a legal document and questions as to its preparation are not proper in front of the jury as a general proposition certainly.

Second, I wish to put Mr. Rosenberg on notice that if he goes into this, it is the government's position that Government's Exhibit 3573, I believe, for identificatio becomes admissible. We intend to bring back probably Mr. Dawson, other narcotic agents who interviewed Mr. Dawson two and a half years ago when he identified Georgie as Butch Pugliese, Mr. Rosenberg's client.

Finally, your Honor, I make the point if he wants to explore this matter, Mr. Phillips should certainly not be excluded from the courtroom. He is the Chief of the Narcotics Unit. He has been responsible for the investiga-

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tion in this case and a major part of the trial and the government should not, on this kind of notice, be required to have Mr. Phillips leave if I am to be called to the witness stand. The defense have had witnesses in the courtroom in the past during this trial and the government has not raised that as an issue to date. I think it is wholly unfair to the government at this point to make this sort of application.

MR. ROSENBERG: Your Honor --

MR. CURRAN: And particularly to make it in front of the jury.

MR. ROSENBERG: If Mr. Phillips was to leave the room, the sole purpose would be just to show the consistency of testimony, he will still be left with two U.S. Assistant Attorneys who can cross both witnesses of mine and they certainly are entitled to their conferences at any time that they want to ask for it. But I think Mr. Phillips should not be in the courtroom when I am questioning him on the possibility that there may be inconsistent testimony.

MR.CURRAN: Your Honor, if Mr. Rosenberg wants to make an offer of proof as to what he is going to ask me --

MR. ROSENBERG: You know. You pretty much

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guesssed what I wanted from you.

MR. CURRAN: If that is the case, in the light that, then I see no reason for Mr. Phillips to leave the courtroom, and the reason for that will become obvious aft Mr. Rosenberg asks me about two questions.

THE COURT: I think I know what he is saying.

MR. ROSENBERG: That he is not familiar with th facts, that Mr. Phillips is?

MR. CURRAN: I never saw the supplemental bill of particulars until this morning.

MR. ROSENBERG: All right come on. If you want him here, keep him here.

(Inopen court.)

P A U L J. C U R R A N, called as a witness on behalf of the defendant Frank Pugliese, being first duly sworn, testified as follows:

DIPECT EXAMINATION

BY MR. ROSENBERG:

Q Mr.Curran, you are the U.S. Attorney of this district?

A I am.

Q And you are charged with responsibility of prosecuting this case, is that correct?

A I am charged with the responsibility of all cases

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in this district, yes.

Q You are familiar with this case, is that correct, with the facts surrounding this case, is that right?

A I am.

Q Can you tell us the first time these defendants were indicted?

A The first time which defendants were indicted?

Q The defendants in this case. There was a superseding indictment, wasn't there, in this case?

THE COURT: I think there was more than one.

A There was an indictment filed in April as to two or three of the defendants in this case.

Q With respect to Butch Pugliese, when was he indicted?

A My best recollection is it was early October of this year.

Q And was there --

THE COURT: Hold it. You mean --

THE WITNESS: I am sorry, of 1973, last year.

Q And was there a superseding indictment with respect to Butch Pugliese?

A I believe there was, yes.

Q And when would that be, sir?

A My best recollection on that would be early

December of 1973.

Q Early December, 1973.

Was there a demand made on the government for a bill of particulars in this case?

A I assume there was. I never saw the papers.

Q And was there --

A A bill was furnished.

Q It was?

A A bill was furnished. Whether all defendants made a demand I don't know.

Q Do you know when that bill was furnished?

A I have no idea. I never saw the bill.

Q Was there also a demand made for a supplemental bill of particulars in this case?

A I saw this morning for the first time a supplemental bill which I understand was served upon defense counsel. I don't know whether a demand was made by defense counsel or whether it was done by the government to update the first bill.

Q Do you know when that supplemental bill of particulars was given to the defense?

A I do not.

I assume it was some time before the trial, but I don't know the date.

Q That's what I'm getting at.

And would you say it was about two or three days before the trial commenced, the supplemental bill of particulars?

A I couldn't say.

Q You could not say?

A I believe it was before that, but I don't know.

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Q There was a Tennessee Dawson that testified on behalf of the government. You recall his testimony?

A Yes vividly.

Q Was he the one, Tennessee Dawson, that gave you information about a Georgie?

A I believe that Mr. Dawson told the narcotics people in Washington about a Georgie back in 1971.

Q And since 1971 was Georgie interviewed by Mr. Phillips?

A Was Georgie interviewed by Mr. Phillips?

Q I am sorry. Withdrawn. [illegible]

Was Tennessee Dawson interviewed with respect to Georgie?

A I don't know. I assume he was, yes.

THE COURT: You mean by Mr. Phillips.

MR. ROSENBERG: Mr. Phillips, did Mr. Phillips interview Tennessee Dawson.

THE COURT: You left out Mr. Phillips after you started the question the second time.

A I don't know that. I know that Mr. Fortuin interviewed Mr. Dawson on several occasions.

Q I show you the government's supplemental bill of particulars and I refer you to the first paragraph, wherein it says additional co-conspirators.

A I see that.

Q Did you ever see this document before?

A Not before this morning. I saw it before you showed it to me just now this morning.

MR. ROSENBERG: Your Honor, I am going to offer the bill of particulars at this time.

MR. PHILLIPS: Your Honor, we object. I don't see the relevancy of it.

MR. ROSENBERG: When it comes in I will show the relevancy, if your Honor please.

MR. FISHER: If your Honor please, may I understand the scope of the offer. Is Mr. Rosenberg offering the entire bill of particulars?

THE COURT: That is the way I understand it.

MR. ROSENBERG: No. I am offering the government's supplemental bill of particulars.

MR. WARNER: May defense counsel have an opportunity to look at the piece of paper that Mr. Rosenberg is holding in his hand?

THE COURT: Sure. I think you better.

MR. ELLIS: Your Honor, may we have a side bar on this?

THE COURT: Yes.

(At the side bar.)

THE COURT: Who wants to state the objections on behalf of all the other defendants?

MR. ELLIS: Your Honor, rather than an objection I think I can perhaps remove some of the sting from this offer.

As I understand Mr. Rosenberg's purpose in offering the supplemental bill from previous conversations I had with Rosenberg, he can accomplish that purpose by introducing the first page alone.

MR. LOPEZ: Sure.

MR. ELLIS: I would have no objection to that. My problem is that the second page refers to another document which could raise speculations or would be somewhat meaningless unless that other document is also introduced, and that would really open a can of worms to which I would strenuously object.

I suggest that the offer be limited to the first page only.

MR. PANZER: I am going to object --

MR. WARNER: May I say something, please.

The problem, your Honor, seems to be that Mr. Rosenberg wants to show that John Doe a k a Georgie was mentioned in the same supplemental bill of particulars as --

THE COURT: Frank Pugliese.

MR. WARNER: Frank Pugliese.

MR. PANZER: I have no objection to Paragraph 1. Anything after that I would object to, because it refers to my client and it refers to overt acts in the indictment.

MR. LOPEZ: Would Mr. Phillips agree to the following stipulation, that the government some time in December, 1973, furnished counsel a governmental supplemental bill of particulars where it indicated in Paragraph 1 that an additional co-conspirator was one John Doe also known as Georgie and in Paragraph 3 amended the original bill of particulars to indicate Frank Pugliese, March, 1970.

MR. PHILLIPS: Your Honor, we object to this entire offer and we object on the ground there is no foundation that has been laid.

Mr.Rosenberg is obviously offering this to show recent fabrication on the part of Dawson as to the identification of Pugliese, and I don't see how he can properly do that through an offer of a supplemental bill of particulars filed by myself, particularly through the U.S. Attorney, who didn't even see it until this morning.

Furthermore, the bill of particulars, if it is offered, or any reference to it, such as a stipulation

suggested by Mr. Lopez, is unfair to the government because it doesn't bring out the entire story about the original bill of particulars and the other co-conspirators supplied by the government.

MR. WARNER: That part of the story has no relevance to this, that other names were supplied.

MR. LOPEZ: Could you offer a stipulation, Mr. Phillips, that would be satisfactory to the government in this case?

What is that? That you know nothing about it. Is that your stipulation?

As I suggested to Mr. Rosenberg, the best way to introduce this document is to mark it for identification, put Mr. Phillips on the stand and ask him if he signed this document, and if this was done after investigation and consultation with different people, and did he in Paragraph 1 include among additional co-conspirators John Doe also known as Georgie and did he then amend his bill of particulars on such-and-such a date involving Frank Pugliese, March, 1970.

I think that is the best way. Then Mr. Rosenberg has what he wants and you can have rebuttal.

THE COURT: The rebuttal is going to be --

MR. LOPEZ: Disastrous.

THE COURT: I want the record to reflect that everybody recognizes what the potentialities of this offer are.

I will be very honest with you. I don't think you can get it in through Paul Curran, who says he never saw it before this morning.

MR. LOPEZ: Of course not. Excuse Mr. Curran and call Mr. Phillips.

Don't mention me. I didn't ask you any questions.

MR. WARNER: Considering the prospects for rebuttal and so on, I object insofar as there is any reference or any opening at any time in regard to Joseph Ceriale.

MR. PANZER: I am objecting for the reasons that I stated, that there are references to Harry Pannirello and John Pannirello and overt acts stated in the indictment. For those reasons I am objecting. There is no relevance.

MR. LEIGHTON: That is not coming into evidence, is it, Judge?

THE COURT: That is the offer.

MR. LEIGHTON: I thought Mr. Lopez's suggestion was not to offer it, but to get the facts in through questioning Mr. Phillips.

hp7 Curran-direct

MR. ROSENBERG: Let me see if I can elicit the answers that I want from Mr. Curran without the offer.

MR. LEIGHTON: You can get the answers from Mr. Phillips.

MR. ROSENBERG: Let me see if I can get them from him.

THE COURT: So you are withdrawing this right now?

MR. ROSENBERG: At the moment.

THE COURT: All right.

(In open court.)

BY MR. ROSENBERG:

Q Mr. Curran, was there a representation by your office through the supplemental bill of particulars that an additional co-conspirator was John Doe also known as Georgie?

MR. PHILLIPS: Objection, your Honor. At the very least, your Honor, objection on the ground of hearsay.

THE COURT: No, I will permit it. However, the record should reflect that I am permitting it with full knowledge on the part of defense counsel of the possibilities of rebuttal.

Go ahead.

BY MR. ROSENBERG:

Q You understand the question, sir?

A I understand the question. May I see the document again, please.

Yes.

MR. ROSENBERG: Your Honor, may this witness be excused at this time. I think I would like to call Mr. Phillips.

THE COURT: First of all --

MR. ROSENBERG: They are entitled to cross examine.

THE COURT: Yes.

MR. PHILLIPS: The government has no questions. I don't know whether any other defense counsel have.

THE COURT: Any other defense counsel wish to acquire?

All right. Let the record reflect that no defense counsel wishes to inquire.

All right. Step down, Mr. Curran.

(Witness excused.)

MR. ROSENBERG: Call Mr. Phillips.

jha2

WALTER M. PHILLIPS, JR.,

called as a witness by defendant Pugliese, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSENBERG:

Q Mr. Phillips, are you familiar with the supplemental bill of particulars that was sent out?

A Yes.

Q When was it sent out?

A I believe it was filed on December 27, 1973.

Q Prior to that date did you have a conversation with Tennessee Dawson?

A Yes.

Q Was it Tennessee Dawson that told you that there was a john Doe also known as Georgie? Yes or no.

A No.

Q It was not?

A No, not prior to that date.

Q Not prior to that date?

A No.

Q When did Mr. Dawson tell you about Georgie?

A I don't recall. I don't think I ever asked him specifically about a Ceorgie, but I think it came up

one time when I was in Mr. Fortuin's office with Mr. Dawson, and I think it was subsequent to the filing of the supplemental bill of particulars.

Q At any rate, you listed as an additional co-conspirator John Doe, also known as Georgie, is that correct?

A That's correct.

Q And that was in your supplemental bill of particulars to us, is that correct?

A Yes, that is correct.

Q Indicating that the Georgie is a different person than Butch Pugliese, am I correct?

A That's correct.

MR. ROSENBERG: I have no further questions, if your Honor please.

MR. CURRAN: Would your Honor bear with me one moment?

THE COURT: Sure.

(Pause.)

CROSS EXAMINATION

BY MR. CURRAN:

Q Mr. Phillips, did you speak at any length to Tennessee Dawson, Thomas Dawson, prior to this trial?

A No. Well, by any length what do you mean?

Q For over 10 or 15 minutes at any one time.

MR. ELLIS: Objection.

A No.

THE COURT: No, I will permit it.

Q Do you recall when you first spoke to Mr. Dawson, approximately?

A I believe it was approximately several days after -- several days to a week after the indictment was filed on October 3, 1973.

Q Was that a brief conversation?

A Yes.

Q Any conversation about anyone named Georgie?

A No.

Q In preparing the case for trial in the month of January did you have any conversations with Mr. Dawson which lasted over 10 minutes.

MR. ELLIS: Objection.

THE COURT: No, he can answer that yes or no.

A I believe so. I believe that I had possibly two conversations in Mr. Fortuin's office that lasted in the vicinity of 15 minutes, 10 or 15 minutes.

Q To your knowledge, did Mr. Fortuin spend a good deal more time interviewing Mr. Dawson than you did

in the month of January, 1974?

A Yes, he did.

Q Did Mr. Dawson ever discuss a man named Georgie with you?

A No. I think only one time it came up in Mr. Fortuin's office and I think it was in January, the early part of January.

Q At that time was the Georgie that came up in Mr. Fortuin's office identified in your presence?

A Yes.

Q Who was he identified as?

A Pugliese.

MR. ROSENBERG: Objection, your Honor.

Q The defendant Butch Pugliese?

A Yes.

MR. ROSENBERG: Objection.

THE COURT: I will permit it.

Q You have testified I think, Mr. Phillips, that you prepared the supplemental bill of particulars which Mr. Rosenberg offered in evidence.

A Yes.

Q When did you prepare that? I assume it was before December 27th.

A Well, it wasn't much before December 27th.

It was either the day before or a couple of days before Christmas, because it was a long holiday.

Q Am I correct that before that bill of particulars, supplemental bill of particulars, was prepared and filed by you you had not discussed Georgie with Mr. Dawson?

A That's correct.

Q Would you tell us, Mr. Phillips, where you obtained the name of the John Doe, also known as Georgie, which appears in the supplemental bill of particulars?

A I believe, to the best of my recollection, that I obtained it from an agent, and I don't recall which agent it was, and I believe that it was -- I was told that Georgie, in addition to another individual whose name appears in the supplemental bill of particular as John Doe, also known as Bubbles, had traveled from Washington in the company of either Tennessee Dawson or Allen -- or Warren Robinson or one of the other individua that came up from Washington. That is the best of my recollection.

Q In any case, Mr. Phillips, you knew that the John Doe, also known as Georgie, whom you were referring to in the supplemental bill, was not the defendant Butch Pugliese?

MR. ELLIS: Objection.

A That's correct.

THE COURT: No, I will permit it.

Q Did Mr. Fortuin have anything to do with the preparation of filing of the supplemental bill of particulars?

A No, he did not.

Q Did you have any conversations before December 27, 1973 with Mr. Fortuin about Mr. Dawson's statements to him?

A None that I can remember.

Q Mr. Phillips, I show you Government's Exhibit 3573 for identification, a Xerox copy of a document consisting of four pages, and I ask you if you recognize that document.

A Yes.

Q What is that document, Mr. Phillips?

A Well, this is a document that was identified earlier in the trial as a report of Agent Logan.

Q And what is the date of that report, Mr. Phillips?

A November 14, 197 -- I believe it is -1, 1971. Yes.

Q Does it refer to an interview on November 3,

1971?

A Yes.

Q By Agent Logan?

A Yes.

Q And another agent?

A Yes.

Q Does it refer to an interview on that date in Washington, D.C. with Thomas Dawson?

A Well, it states "cooperating individual," but I understand that that was Thomas Dawson.

MR. CURRAN: Your Honor, at this time the government offers in evidence Government's Exhibit 3573 for identification, and we refer specifically to paragraphs 5 and 6 of that document.

MR. LEIGHTON: Objection, your Honor.

THE COURT: At this time I will sustain the objection. It should be noted that I started that with the words "At this time."

Q Mr. Phillips, when did you first see this document, if you recall?

A When it was produced during the trial, when Agent Logan testified, or just immediately before he testified.

Q Well after January 15, 1974?

A Yes.

Q And well after you prepared and filed the supplemental bill of particulars in this case?

A Yes.

MR. CURRAN: No further questions, your Honor.

THE COURT: Anybody else wish to inquire?

All right. Mr. Rosenberg does I guess this is technically redirect. None of the other defense counsel apparently wish to cross examine. Go ahead.

MR. ROSENBERG: Thankyou, Judge.

REDIRECT EXAMINATION

BY MR. ROSENBERG:

Q You spoke to an Agent Logan, is that correct?

A When?

Q At any time. When was the first time you spoke to him?

A In Mr. Fortuin's office as he was preparing him for trial.

Q That was the first time you spoke to him?

A I believe so, yes.

Q Did you have any data that was communicated by anybody, by any of the other agents, with respect

to the testimony of Agent Logan?

MR. CURRAN: I object to the form of that question.

MR. ROSENBERG: I will withdraw the question.

Q Did you know what Agent Logan's testimony was going to be before he took the stand?

A Essentially I knew --

MR. CURRAN: Objection to the form of that, your Honor.

THE COURT: I will let it go. Go ahead.

A Essentially that it was going to be about his undercover purchases from Harry Pannirello.

Q With respect to Tennessee Dawson, there were several interviews of Tennessee Dawson by other agents, is thatcorrect?

A Well, there were several interviews by -- you mean at any time?

Q Yes. In other words, Tennessee Dawson was interviewed by --

A The only interviews that I was aware of with Tennessee Dawson were by the New York agents, Agent Moore and Agent Nolan, to whom I told -- who I directed to interview Tennessee Dawson when he came up here in October, and they did not make any reports about their interviews, so they never communicated to me what in detail the reports were, what the interviews were about.

Q If I understand you correctly, there were agents and members of your staff that interviewed Tennessee Dawson, is that correct, but you never knew what he was going to testify to?

MR. CURRAN: I object to that, your Honor.

THE COURT: Let me hear the rest of the question.

Q You never knew what he was going to testify to?

A I knew generally what he was going to testify

to, yes.

Q With respect to the name of Georgie, there were interviews by agents, there were interviews by people from your office of Tennessee with respect to the name of Georgie, am I correct?

A There were no interviews with respect to the name of Georgie until after the supplemental bill of particulars was filed. I did not know that Tennessee knew the defendant Pugliese by the name or Georgie until some time in Mr. Fortuin's office in the early part of January. I did not see Agent Logan's report until either right before he testified or just as he was testifying on direct examination, and Nolan and Moore never made a report of their interviews in October.

Q Dawson was interviewed by agents, is that correct, dating back to 1971? Is that right?

A Yes. Now I am aware that he was.

Q Is that right?

A Yes.

Q All right. At that time Dawson told those agents that there was a Georgie, is that correct?

A According to Agent Logan's report, that's correct.

Q Is that correct?

A Yes.

Q But you never read that report?

A That's correct.

Q I see. Now, when you found out you made this horrendous mistake did you bother telling anybody?

MR. CURRAN: I object.

THE COURT: What horrendous mistake?

Q Well, that Georgie was not an additional co-conspirator. Did you bother telling anybody of the defense?

A My impression was --

Q I asked you did you bother telling anybody?

MR. CURRAN: Your Honor, I object to the form of the question.

THE COURT: That is like asking when did you stop beating your wife. Okay, objection sustained.

MR. ROSENBERG: I have no further questions.

MR. DOWD: May I have a moment to talk to Mr. Rosenberg?

THE COURT: Yes.

(Pause.)

BY MR. ROSENBERG:

Q Did you interview Tennessee Dawson on

October 11, 1973?

A At approximately that time, yes.

Q Is that correct? Was there a conversation with respect to a Georgie at that time?

A No, there was not.

Q There was no conversation?

A There was a conversation that I had with Tennessee Dawson, but it didn't pertain to Georgie.

Q Anything about Butch Pugliese?

A I don't recall. There may have been. I don't recall.

Q You are certain about what you are telling us, that there was no conversation with respect to Butch, is that correct?

A No. I didn't say there was no conversation with respect to Butch. I just don't recall any conversation with respect to Georgie.

MR. CURRAN: That is not what he said, your Honor.

Q You don't? Let me see if I can show you something to refresh your recollection, 3574 marked for identification.

Having read that, does that refresh your recollection?

A I haven't finished reading it.

MR. CURRAN: I wonder if he ight be able to read it, your Honor.

THE COURT: Yes. Just hold on to it.

MR. CURRAN: He almost got separated.

Q Having read that, does that refresh your recollection that when you --

A No, it does not.

Q This does not refresh your recollection that you spoke to Tennessee Dawson about a Georgie?

A No, it does not.

Q It does not?

A No.

Q Is this your handwriting?

A Yes. Yes, it is.

Q Do you see a name here Georgie?

A Yes, I do.

Q In your handwriting?

A Yes.

Q October 11, 1973?

MR. CURRAN: All right, your Honor, I object.

Q And it doesn't refresh your recollection as to whether you talked --

MR. CURRAN: It has been asked and answered twice already, your Honor.

Q This does not refresh your recollection as to whether or not --

THE COURT: He has already said it.

MR. CURRAN: That is the hat trick, your Honor.

THE COURT: All right.

Q You are telling us under oath now that on October 11, 1973 you did not speak to Tennessee Dawson with respect to the name of Georgie?

A No, I'm not saying that. I said I don't recall it.

Q You don't recall it?

A No.

Q Okay.

MR. ROSENBERG: I have no further questions.

MR. CURRAN: Would your Honor bear with me one moment?

THE COURT: Yes.

(Pause.)

RECROSS EXAMINATION

BY MR. CURRAN:

Q Mr. Phillips, you are chief of the narcotics

Unit in the United States Attorney's Office?

A That's correct.

Q And you have approximately how many assistants working for you under you in that unit?

A Eleven.

Q And are there other assistants who you are not directly responsible for who work for you from time to time?

MR. PANZER: I object to this, your Honor. I don't see the relevance.

THE COURT: I don't see it either.

A Yes.

Q You are responsible for many cases?

A That's correct.

MR. CURRAN: I have no further questions.

THE COURT: All right, ladies and gentlemen, you may step out. We are going to take our morning break now.

(The jury left the courtroom.)

THE COURT: Let us take 10.

MR. CURRAN: Your Honor, before that, may I now offer in evidence Government's Exhibit 3574 for identification. That is the document which Mr. Rosenberg was referring to on his examination of Mr. Phillips.

MR. ROSENBERG: Objection

THE COURT: Sustained.

(Recess.)

(In open court; jury not present

THE COURT: All right, Mr. Clerk. I received from Mrs. Rosner a final bill from the Adler Reporting Service.

As you may recall, I made arrangements through a formal order for those people who are assigned under the Criminal Justice Act to bear their proportionate share of this so that the total bill would not fall strictly to retained counsel.

Mr. Panzer, I think you picked up a form already.

MR. PANZER: Yes, sir.

THE COURT: This bill is going to be Court's Exhibit No. 68 for identification.

Would you be good enough to tell the other assigned counsel where to pick up that particular form?

MR. PANZER: I will, your Honor.

THE COURT: All right.

(Court's Exhibit No. 68 was marked.)

xx THE COURT: Mr. Curran, you want to be heard again on Government's Exhibit 3574 for identification?

MR. CURRAN: Yes, your Honor.

THE COURT: 3574, I believe, is the inter-

view sheet signed by Mr. Phillips. Go ahead

MR. CURRAN: Yes, your Honor. This is a three-page Xerox copy of the document. It was the document about which Mr. Rosenberg questioned Mr. Phillips.

Mr. Rosenberg established, I believe improperly, but nonetheless it is before the jury, that it occurred on October 11th, in Mr. Phillips' handwriting and Mr. Phillips conducted the interview, and he asked him about a Georgie in it, and that is also in the record.

It is the government's position now, your Honor, in light of what Mr. Rosenberg has brought out in front of the jury, the jury should be entitled to see exactly what is said about Georgie and should be entitled to see the document.

There are no references --

THE COURT: You are particularly interested, I am sure, in the fact -- I just looked at this about 20 minutes ago, but it is my recollection it says "Georgie or Butch (the same person)."

MR. CURRAN: Yes.

THE COURT: All right, Mr. Rosenberg.

MR. ROSENBERG: Your Honor, I am going to object to it.

I attempted to refresh the witness' recollecti

as to whether or not he had a prior conference with a Tennessee Dawson. He indicated he did. He indicated that his recollection was not so refreshed, and to introduce that I think would be highly prejudicial, your Honor.

MR. CURRAN: Your Honor, if that is as far as Mr. Rosenberg had gone in his questioning I might well agree with him, but that is not precisely what happened, as I recall it. He did indeed do that, but then he went on to bring out from Mr. Phillips that the name Georgie appeared on the document, that it occurred on a certain date in October, I believe October 11th, and he asked a number of other questions which went to what appears on the face of the document, a document which was not then in evidence. It went beyond an attempt to refresh the witness' recollection just by showing him a document and asking the question, he went considerably beyond that, and in the light of those questions and answers it is the government's position the document should now be received in evidence.

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THE COURT: All right.

MR. ROSENBERG: Your Honor, I am placed in a position any time that a witness's recollection is not refreshed they can put in whatever damaging material that they would want to, so by him saying, well, it wasn't refreshed, that was the end of it.

Now you can put in all the 3500 material because I touched upon it to refresh other witnesses' recollections. I don't think that is right, Judge.

MR. CURRAN: Our position is if the witness's recollection is not refreshed, then the examiner has the option of stopping or offering the document, but he doesn't have the option of opening the door some more and referring to the document, asking about items in the document and then saying that the jury is not entitled to see the very document which he went into.

THE COURT: All right.

MR. ROSENBERG: That was just to prod his recollection by going further. I thought if I reminded him that it was in October, that it was in his handwriting, this would help refresh his recollection. Well, it didn't.

THE COURT: All right. Your objection is sustained. I am not going to permit it.

MR. ROSENBERG: Thank you, your Honor.

MR. CURRAN: Your Honor, may I offer it as past recollection recorded?

MR. ROSENBERG: Objection.

THE COUPT: All right. I understand your two offers. No, I am not going to take it in.

Next I understand, Mr. Phillips, that you have discussed with Mrs. Rosner and Mr. Siegal the stipulation concerning one Moe Lentini.

MR. PHILLIPS: That is correct.

THE COURT: I just want to make sure that all lawyers heard the stipulation before the jury comes back out so that nobody is surprised.

MR. PHILLIPS: The stipulation is that Moe Lentini was arrested on April 14th by federal authorities, that is April 14, 1973, and that he was released from custody on bail on May 4, 1973, in the amount of $75,000 personal recognizance bond secured by $25,000 cash or surety and that he was in custody in lieu of bail during the period of time from April 14th to May 4.

MRS. ROSNER: Your Honor, I consented to the stipulation on the understanding that Mr. Siegal thought it was in his client's best interest. I have no interest in this.

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Mr. Siegal now informs me he doesn't want it, so I withdraw my consent.

MR. SIEGAL: I never asked for that stipulation.

MR. PHILLIPS: Myunderstanding was from Mr. Lopez that it was agreeable to all counsel and that Mrs. Rosner hadn't arrived in court and that's why --

THE COURT: That is why I --

MR. LOPEZ: Mr. Phillips came to me with the stipulation. I would be delighted to receive any stipulation from Mr. Phillips.

I advised Mr. Phillips that this was a matter which would have to be stipulated to by Mr. Siegal and Mrs. Rosner.

As far as the stipulation, I have no standing in the matter. It is up to Mr. Siegal and Mrs. Rosner.

MR. SIEGAL: I don't want to consent to it at this time. I will talk to Mr. Phillips a little later.

THE COURT: All right. Does anybody else have any objections?

The record should indicate nobody else has any objection.

Why don't you fellows get together. The reason for this is the government was holding open its direct case, instead of saying the magic words, the government was holdin

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up resting their direct case waiting for this stipulation. If you can get together and have a stipulation, that is fine.

We discussed something in the robing room and I might as well let everybody in on it.

Mr. Richman is going to produce Mrs. Tolopka hopefully at 2 o'clock. The government has consented to taking Mrs. Tolopka out of turn. I don't know how long the defendant's testimony is going to take, but if anyone has any objection to taking Mrs. Tolopka out of turn at 2 o'clock I want to hear about it now.

All right. I assume that there is no objection.

There are very real, valid reasons for doing it which I don't think I have to go into.

All right. Mr. Richman, are you ready to go ahead?

MR.RICHMAN: I am ready.

THE COURT: Let us get the jury back.

MRS. ROSNER: While we have this captive audience, might I take the opportunity to announce what arrangements have been made concerning payment?

THE COURT: I already did.

MRS. ROSNER: You did already, Judge? Thank you.

MR. PHILLIPS: Your Honor, are we to understand that the defendant Pugliese has rested his case?

MR. ROSENBERG: Since I have no more U.S. Attorneys, I rest.

THE COURT: No,he has rested.

Let us get the jury back in, please.

(Jury present.)

THE COURT: All right, Mr. Richman, you may proceed.

MR. RICHMAN: At this time the defendant Benjamin Tolopka calls himself, your Honor.

B E N J A M I N T O L O P K A, one of the defendants, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RICHMAN:

Q Mr. Tolopka, you are a defendant in this case, are you not?

A I am.

Q How old are you, sir?

A 55.

Q Are you married?

A Yes.

Q Where do you live?

A 1464 East 233rd Street in the Bronx.

Q And how long have you lived there?

A It will be 23 years.

Q You mentioned you were married. Can you state your wife's name?

A Bertha.

Q And how long have you been married?

A 35 years.

Q And you are presently living with your wife?

A Yes.

Q Do you have any children?

A Two.

Q State the name and age of eachchild.

A Patricia, 32, and James, 29.

Q And does Patricia live with you?

A No.

Q Is she married?

A Yes.

Q Does she have any children of her own?

A Four.

Q And James?

A He is single.

Q So you are a grandfather, right?

A Correct.

tp7 Tolopka-direct

Q Mr. Tolopka, could you tell us something about yourself? Where were you born?

A Up-State, New York, in a town of Columbia.

Q And when did you come to New York City?

A 1936. The summer of 1936.

Q And some time thereafter, in approximately 1938, you met Mrs. Tolopka and married her, is that right?

A 1939.

Q There came a time when you joined the Police Force, is that correct?

A I did.

Q And can you tell us when that was?

A November 21, 1942.

Q I show you a four-page document.

Is this your application for the Police Force?

A Yes.

MR. RICHMAN: If the Court please, I respectfully request to offer that as Defendant Tolopka's Exhibit A for identification and in evidence.

MR. CURRAN: Objection, your Honor. There is no relevance.

THE COURT: Let us first have it marked as Defendant Tolopka's Exhibit A.

(Defendant Tolopka's Exhibit A marked for identification.)

xx

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THE COURT: Does any defense counsel have any objection to the receipt of this application?

All right. Mark it received in evidence.

MR. RICHMAN: Thank you, your Honor.

xx (Defendant Tolopka's Exhibit A received in evidence.)

MR. RICHMAN: May I withhold it at this time, your Honor? I will show it to the jury later on.

THE COURT: All right.

Q Mr. Tolopka, you were a member of the Police Force from 1942, did you say?

A Yes.

Q Were you a patrolman initially?

A Yes.

Q At some point you became a detective, did you not?

A 1946.

Q And you became a detective and you worked in the 28th Precinct?

A That's correct.

Q How long did you work in the 28th Precinct?

A 12 or 13 years.

Q Did you have any specific or special assignments?

A No; in the squad. Everything.

tp9 Tolopka-direct

Q You made all kinds of arrests?

A Yes.

Q And in the 28th Precinct, did you receive any commendations?

A Yes, many.

Q How long were you assigned to the 28th Precinct?

A About 12 or 13 years.

Q And after that you were transferred to another precinct, is that correct?

A To the 5th.

Q And how long did you stay in the 5th Precinct?

A Until I retired; eight years.

Q In other words, you stayed there until you retired?

A That's correct.

Q When did you retire?

A July 2, 1966.

THE COURT: Before we get into that, will you tell us where the 28th Precinct is?

THE WITNESS: 229 West 123rd Street.

THE COURT: And how about the 5th Precinct, where is that?

THE WITNESS: 19 Elizabeth Street.

THE COURT: All right. Go ahead, Mr. Richman.

I am sorry to interrupt.

THE WITNESS: Both in Manhattan.

THE COURT: Yes.

Q That was 23-1/2 years on the Force, is that correct?

A A little more than that, I guess.

Q When you retired, you retired with a pension, is that right?

A That's correct.

Q And you received numerous commendations, had you not?

A 41.

Q And are you one of the most decorated men in the department, if you know?

A Yes.

Q Did you, during your tenure in the department, receive a record of charges as to your commendations?

MR. CURRAN: Pardon me, your Honor, I didn't hear the question.

THE COURT: I am not sure I understand it.

Let me see it. Let me see if we can get around it.

(Handed to Court.)

THE COURT: Mark this as Defendant Tolopka's

tpll Tolopka-direct

Exhibit B.

xx (Defendant Tolopka's Exhibit B marked for identification.)

Q Mr. Tolopka, while you were in the department, did you receive a copy of those lists of commendations?

A Well, we used to get them from time to time as you got them.

This is the total sum, I believe.

Q Does that indicate all your commendations?

A Well, if there are 41, it does.

MR. RICHMAN: I respectfully offer it at this time, your Honor, as Defendants' Exhibit B in evidence.

MR. CURRAN: Might I look at it, your Honor?

THE COURT: Yes.

(Pause.)

MR. CURRAN: No objection, your Honor.

THE COURT: All right. Does any counsel for the defense have any objection?

There is no objection. It is received in evidence.

xx (Defendant Tolopka's Exhibit B received in evidence.)

MR. RICHMAN: At this time, your Honor, I would respectfully ask that it be passed to the jury for the

jury's perusal.

THE COURT: All right.

Whi'e we are doing it, do you make an application to have the other exhibit passed around?

MR. RICHMAN: Yes, your Honor, we might as well do both.

(Pause.)

MR. RICHMAN: If the court please, I have no objection to breaking now.

THE COURT: I think we ought to break for lunch now.

(The jury left the courtroom.)

THE COURT: I hope you all were watching the jury as they went through the last two exhibits. They spent 22 minutes by my count. It is indicative of the care and concern that this jury is giving to this case that they would sit and two at a time read through those documents.

All right, gentlemen. I will see you back here at 2 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

(2:00 p.m.)

(In open court; jury not present.)

THE COURT: Mr. Richman, please?

MR. RICHMAN: Yes, your Honor.

THE COURT: Get Mrs. Tolopka.

MR. RICHMAN: She is here.

THE COURT: Let us do it now.

Bring in the jury, please.

I hope everybody recognizes that we are taking one witness out of the usual order and in the middle of another witness, and I assume that everybody waives any objection that they may have.

Am I correct?

MRS. ROSNER: Yes, sir.

MR. FISHER: Yes, sir.

MR. RICHMAN: Your Honor, there may be more than one witness. We have three witnesses. I explained that to Mr. Phillips. That would be the daughter and the man that transported Mrs. Tolopka down here today.

THE COURT: I assume everybody waives the three witnesses out of turn.

MR. SIEGAL: Waive.

MR. LOPEZ: Yes.

MR. FISHER: Yes.

(Jury present.)

THE COURT: Ladies and gentlemen, generally in a jury trial a witness is called and is then cross examined. In nonjury trials,where the judge tries the case himself, we often take witnesses out of order. Today, for a lot of reasons, we are going to take a number of witnesses out of order. I don't want you to forget the start of the testimony of the defendant Ben Tolopka. You will recall that when you left we had just gone through the records, two of the records from the New York City Police Department.

At this point it is my understanding that Mr. Richman, on behalf of the defendant Ben Tolopka, calls Bert Tolopka.

Is that correct, Mr. Richman?

MR. RICHMAN: That is correct, your Honor.

THE COURT: All right. Mr. Clerk, would yo swear in the witness.

BERTHA TOLOPKA, called as a witness by the defendant Tolopka, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RICHMAN:

Q Mrs. Tolopka, are you the wife of Benjamin Tolopka?

A Yes.

Q Will you tell us when you were married and where?

A I was married January 29, 1939 in St. Adelbert's Church on 156th Street, between Melrose and Elton Avenue in the Bronx.

Q Have you been living with Mr. Tolopka as man and wife since that day?

A Ever since that day.

Q Do you have any children of this marriage?

A Yes.

Q State the name and age of each child?

A Patricia there will be 33 and James will be 29.

Q Where do you live at the present time?

A Pardon me?

Q Where do you live?

A 1464 East 233rd Street?

Q That is in the Bronx, isn't it?

A In the Bronx, yes.

Q Mrs. Tolopka, the jury will note you are sitting in a wheelchair. Will you tell me why you are in the wheelchair?

A May 3, 1973 I had a stroke and a slight heart attack, heart seizure.

Q And are you incapacitated?

A Yes. I can't move my left hand, left foot, can't stand alone.

Q Is your husband caring for you at the present time?

A Yes. He has to do everything for me; bathes me, dresses me, does the housework, shopping. Everything that has to be done in the house.

Q Mrs. Tolopka, I would like to direct your attention to the period of time about four years ago or three and a half years ago, to August of 1970.

Do you remember that period of time generally?

A Well, generally in August I am upstate, yes, sir.

Q In fact, you are upstate for the whole summer, are you not?

A Yes. I am there until about October and then

I come to the city in October, and I go back there in November to vote up there.

Q When you say upstate, where is this upstate?

A In Jordanville.

Q Is that a house that your daughter owns?

A Yes, it's a house my daughter owns.

Q And when did your daughter buy that house, if you recall?

A Nine years ago.

Q About 1966, would you say, or '65?

A It will be nine years.

Q Is it your policy to go up there in May and return in or about the middle of October?

A Yes, yes.

Q And does your husband go with you during that period of time?

A Yes. When he's not working he goes back and forth with me.

Q When you say working, where does he work?

A At the Yonkers Race Track.

Q That is since he is retired from the Police Department?

A Yes, since he retired from the Police Department.

Q What does he do there, if you know?

A He's a security officer there.

Q And do you know his working hours?

A Well, they are usually starting at 6, but he's usually there around 5. He leaves the house about 20 to 5 every evening.

Q And what time does he return home?

A Oh, 11:30, 12 o'clock. It depends how busy they are, what days it is.

Q So generally he leaves the house around just before 5 and comes back about 12 o'clock or so?

A Right. That's right.

Q During the month of August, was that the system also, he was working for the track?

A Yes. If he works the tracks he's at the trac If he's not at the track he's upstate with us.

Q You are sure about that?

A Yes, I am.

Q You don't remember any particular days in August of 1970, do you?

A No, no particular days. No.

Q But you had a system between you as to when he was working and where he would be when he was not working, isn't that correct?

A Right.

Q Could you tell the jury slowly exactly what you mean by this type of system?

A Well, if he was not working he'd be upstate with us because in August the vegetables are ready, the tomatoes are ready. We pick everything and then he helps us can and freeze the vegetables.

1B

Q In other words, you have a small farm there, is that right?

A Yes.

Q And he would come in, work a week?

A Yes.

Q And then he would return the next day after he finished work, is that it?

A When he finished work Saturday night, Sunday morning 9.30, 10 o'clock in the morning he'd be up there already.

Q So it is your testimony that he would generally finish work on a Saturday night at the track?

A On a Saturday night, yes.

Q How do you know Sunday morning he would be up there?

A Well, I was always there.

Q How do you know it was Sunday?

A Well, as a rule when he worked all week, that Saturday he'd get through and then he'd be off the following week, so he'd be up there Sunday morning.

Q Did he ever, to your recollection, miss a day? Like, if he didn't work, would he stay in the City an extra day?

A No, no.

Q Are you sure of that?

A I'm sure of that.

Q I direct your attention to the end of August, 1970. Did something unusual happen that year that makes that year stand out in your mind?

A Well, in the springtime my husband's car burnt down, in the spring of that year.

Q And is that why that year sticks in your mind?

A Yes.

Q I direct your attention to a friend of yours, something about a child. Does that bring anything to your recollection?

A To who?

Q A child.

A A child?

Q The end of August of that year.

A Well,Richie's son had an accident in a car, but, I mean, he was a teenager already, not a young child.

Q What happened to his son?

A I think he got hurt with the car on 233rd some place.

Q How serious was that injury?

A It was pretty serious, because I think he lost sight in one eye due to that accident.

Q And that is the reason that time sticks in your mind more or less, is that right?

A Right.

Q Mrs. Tolopka, you realize your husband is faced with a very serious charge here?

A Yes, I do.

Q And do you realize after I am finished with you someone is going to ask you questions?

A Yes. That's all right.

Q Did you ever meet me before this case?

A I met you a week ago Tuesday. I think it was February 19th you came to the house the first time.

Q And I discussed this matter with you?

A Yes, you did.

Q Do you remember me asking a question to you -- withdrawn.

Would you lie for your husband?

A I said no, I would not.

Q Would you lie for your husband now if I asked you?

A No, I would not lie.

MR. RICHMAN: Your witness, Mr. Curran.

MR. CURRAN: No questions, your Honor.

THE COURT: All right. Mr. Tolopka and Mr.

tp4 Bertha Tolopka

Richman, would you come up and help Mrs. Tolopka from the witness stand.

(Witness excused.)

THE COURT: All right, Mr. Richman, who is your next witness?

MR. RICHMAN: John Stasio.

THE COURT: Mr. Tolopka, in your absence the next witness your attorney called was John Stasio. I just want to make sure you know what is going on.

J O H N S T A S I O, called as a witness on behalf of the defendant Tolopka, being first duly sworn, testified as follows:

(The witness resides at 1468 East 233rd Street, Bronx, New York.)

DIRECT EXAMINATION

BY MR. RICHMAN:

Q Mr. Stasio, you are a neighbor of Benjamin Tolopka, are you not?

A Yes. I live two houses on the left of Ben Tolopka.

Q How long do you know Ben Tolopka?

A About 18 years I lived in the neighborhood.

Q Have you ever been convicted of a crime, sir?

A Me, myself? No.

Q What is your business or occupation?

A I'm a mechanic in the movie industry.

Q What do you do?

A Fix machinery and equipment that breaks down during nights.

Q Are you married?

A Yes, I am.

Q How long are you married?

A 20 years.

Q Have any children?

A Yes, I do. Two --

MR. CURRAN: Objection, your Honor, on relevance.

THE COURT: Yes. It is irrelevant, but he has two children. Okay.

MR.RICHMAN: I don't think it is irrelevant to him.

THE COURT: It is not irrelevant to the witness, I'm sure of that.

All right, sir. Answer the questions.

Q Mr. Stasio, since Ben Tolopka's arrest, did you find out about the fact that Ben was arrested?

A Repeat that?

Q Did there come a time when you found out that Ben Tolopka was arrested?

A Yes. I found out on January 11th of '73 -- of '74, I'm sorry.

Q You just found out last month, is that right?

A That's right.

Q Would you tell the Court and the jury how you found out?

MR. CURRAN: Objection, your Honor, the same grounds.

THE COURT: I will permit it.

Tell us how you found out.

A On January 11th, at approximately 2.00 a.m. -- 2.00 p.m., three agents came to my house toquestion me about me about Ben Tolopka and at that time I found out that Ben Tolopka was indicted about two weeks prior to January 11th, and this is when I found out.

Q And you were brought down to Mr. Curran's office, were you?

A Then I was called to Mr. Curran's office, yes.

Q Did they ask you questions about --

A Yes. They asked me the same type questions the agents asked me and I answered to the best of my knowledge.

2A Q After he was arrested did you have occasion to discuss with people in the community or other persons --

A After I left, yes, I did, I discussed the case. I was interested in finding outwhy my neighbor was, you know, on a charge like this. I felt it was a misjudgment on his part. He never --

THE COURT: Mr. Stasio, don't tell us what you felt. You went around and you talked about it. All right.

Q What is the reputation of Benjamin Tolopka in the community for truthfulness and veracity?

A He has been a good neighbor to everybody. Anybody needs a hand, they go to Ben and he is always willing to help somebody out. I for one --

MR. CURRAN: Your Honor, I don't mind this, but I wonder if he would answer the question.

THE COURT: Yes. The question is what is Mr. Tolopka's reputation. I gather from what you say that he has been good to you on occasion.

THE WITNESS: Your Honor, may I make it clear that I cannot hear too good in my left ear.

THE COURT: I will be louder. What I want to hear from you is what is the man's reputation.

THE WITNESS: Reputation, as I am concerned,

is wonderful. He was a wonderful person since I know him.

Q One further question, Mr. Stasio.

Your house is an identical house to the house that Benjamin Tolopka lives in?

A Yes. The three houses are identical and I own one of them, yes.

Q In order to go down into the basement of your house how many vestibules do you have to pass?

A Well, you come in and there is a little foyer, which is a clothes closet, and you come in and the foyer goes off to the living room, dining room, the bedrooms upstairs.

Then you go into another foyer which leads down to the basement, which to the right -- to the left of it is a bathroom,and then you go down to the basement.

So a total of three foyers, vestibules.

Q You have been in Ben Tolopka's house?

A Yes, I have.

Q Is it the exact same pattern in Ben Tolopka's house?

A Yes, the same identical foyers and vestibules.

Q Does the basement open up on the living room?

A No, definitely not. No way of getting into the basement from the living room, no.

Q I show you a photograph or a series of three photographs.

Do you recognize those photographs?

A Yes, I do.

Q Could you tell us what they depict? What do they show?

A They show Ben Tolopka's house, the side entrance, right and left, front entrance.

MR. RICHMAN: I would offer --

THE COURT: First we have to have it marked.

MR. RICHMAN: I am sorry. For the purposes of identification, your Honor, C.

xx (Defendant Tolopka's Exhibit C marked for identification.)

THE COURT: The record should reflect that Exhibit C for identification is the same three pictures which the witness has just referred to.

Mr. Richman, I assume you are offering them at this point.

MR. RICHMAN: That's correct, your Honor.

THE COURT: All right. Show them to Mr. Curran.

MR. CURRAN: I have no objection, your Honor.

THE COURT: Does defense counsel have any objection?

MR. RICHMAN: No further questions of this witnes your Honor.

THE COURT: Hold on. I have a little voir dire here.

Put the exhibit in front of the witness, please.

In the three pictures, Mr. Stasio, the top one there us a white house and right beside it apparently there is a red brick structure.

THE WITNESS: Yes, that's right.

THE COURT: You are referring to the white house when you identify it as Ben Tolopka's house, is that correct

THE WITNESS: That's right, yes, sir.

THE COURT: All right.

THE WITNESS: Two houses to the left of this white house is my house.

THE COURT: All right, fine.

Does anyone have any objection?

All right. Receive it in evidence.

(Defendant Tolopka's Exhibit C received in evidence.)

MR. RICHMAN: No further questions, your Honor.

MR. CURRAN: May I, your Honor?

THE COURT: Yes.

xx

CROSS EXAMINATION

BY MR. CURRAN:

Q Mr. Stasio, is Benjamin Tolopka a very good friend of yours?

A Yes, I would say he is a good friend, yes.

Q The answer is yes?

A And a neighbor, yes.

Q The answer is yes?

A Yes, yes.

Q Did Benjamin Tolopka ever tell you that he sold jewelry?

A Yes, I know he sold jewelry, yes.

Q When was the last time you talked to people in the community up there about his reputation for truth and veracity?

A Well, to be honest with you, in the neighborhood I did not talk to people about Ben Tolopka.

Q Did you hear Mr. Richman ask you just a couple of minutes ago --

A Yes. I spoke to the lawyer. This was taken Thursday.

Q Mr. Stasio, I wonder if you would let me finish the question and then you can, within reason, say whatever you want.

A Yes, yes.

Q Did you hear Mr. Richman ask you on direct examination just a couple of minutes ago if you had discussed Benjamin Tolopka's reputation for truth and veracity with people in your community? Did you hear that question?

A If he said community, I didn't hear it, no.

Q But you have discussed his reputation --

A Yes, I have.

Q When did you discuss his reputation last?

A Last Thursday.

Q But not in the community?

A Well, it was in the community. Not with the neighbors,no.

Q With somebody else?

A Yes. The lawyer.

Q With Mr. Tolopka's lawyer?

A Right.

Q Anybody else?

A And the daughter and his wife and son-in-law.

Q The relatives and the lawyer?

A Right.

Q Anybody else?

A No.

hp7 Stasio-cross

Q You are thoroughly familiar with the layout of Mr. Tolopka's house, aren't you?

A Yes, I am.

Q I mean, it is just like your house?

A Yes, it is.

Q Can you see into the basement of Mr. Tolopka's house from outside the house? Yes or no.

A Yes, you can.

Q Just as you can see into your house that way?

A Yes, you could look into my basement.

Q Did you ever meet a man named John Barnaba?

A I didn't personally meet him. I met--I saw him several times, yes.

Q Where did you see him?

A At a friend of mine who owns a - worked at a dog and cat hospital.

Q Is that Richard Forbrick?

A That's right. He brought a dog there several times that I know of.

Q Richard Forbrick is a friend of yours?

A Yes, Richard Forbrick is a friend.

Q About how long have you known Richard Forbrick?

A Oh, about six to seven years.

Q Is he a good friend also?

A Yes, he is.

Q A good friend like Mr. Tolopka is a good friend?

A Well, Richard Forbrick is more of a friend than Tolopka was.

Q More of a friend?

A Yes.

Q And you saw John Barnaba there at the animal hospital?

A I saw him several times there, yes. I didn't know him personally, no

Q Is this going back several years, several years ago?

A Well, my friend Richard had a stroke two and a half years ago. Prior to that. It must have been about three years ago, yes.

Q Maybe four years ago?

A No, I couldn't swear to four years.

Q In any event, it was longer than two and a half years ago?

A Yes.

Q Have you ever been in a place called the Pine Tree Inn?

A Yes, I have. It's two doors down from the animal hospital, yes.

Q Did you ever see John Barnaba in the Pine Tree Inn, that you recall?

A No, I have never seen him in the Pine Tree, no.

Q You have been in the Pine Tree?

A I went occasionally with Richie in the afternoons to have lunch. I did a little work for the doctor.

Q Mr. Stasio, did Benjamin Tolopka visit at the animal hospital from time to time?

A I will tell you how this came about. Yes, Ben Tolopka came --

Q First, if I may, the answer is yes?

A Yes.

Q Now go ahead from there.

A Yes, he did, because I took him over with me several mornings. We had breakfast with Richie. I made it a point to have breakfast with Richie every morning and Ben came with me several times. We had breakfast, yes.

Q So Ben Tolopka knew Richard Forbrick?

A Ben Tolopka has a dog just like I have, yes. Everybody knows Richard Forbrick, yes.

Q The answer is yes?

A Yes.

Q And Ben Tolopka at least a few times with you had socialized with Richard Forbrick, having breakfast or

whatever, is that right?

A Well, if you want to call having breakfast socializing, yes.

Q What would you call it?

A Yes. We chit-chat for a few minutes and then go home.

Q Ben Tolopka is a friend of Richard Forbrick's, too, just like you are, right?

A No, not just like I am. I was closer to Richie Forbrick than Ben Tolopka.

Q Ben Tolopka was friendly with him?

A Yes, he knew him. I can't deny he didn't know him.

MR. CURRAN: May I have a moment, your Honor?

THE COURT: Yes.

(Pause.)

Q Just a few more questions, Mr. Stasio.

A Yes.

Q I think you testified on direct examination that the two or three agents came to your house on January 11th at 2 p.m.

A Approximately, yes. I am not sure of the time.

Q But it wasn't 2 a.m., it was 2 in the afternoon, wasn't it?

A Right. Two in the afternoon is what I said, 2 p.m. I rephrased that, I changed that.

Q How many agents were there?

A Well, I don't know. I believe one agent and two marshals. I don't know. They just identified themselves as United States agents and they entered my home. I let them in.

Q They were polite?

A Oh, yes. No problem. They were nice.

Q They asked you questions?

A They asked me questions.

Q You answered their questions?

A I answered.

Q Then there came a time after that when you came down to my office, is that right?

A Yes. They told me to call you and you told me to come 9 o'clock Monday morning, yes.

Q And we made an appointment?

A We made an appointment for 9 o'clock Monday morning?

Q And we did meet?

A Yes, we did.

Q And was one of the agents present in the office when we met?

A No. That was over my house? No.

Q Was one of the agents who had been to your house in my office when we met?

A No.

Q Did you ever tell Richard Forbrick -- I ask you to listen to this question carefully, Mr. Stasio; I remind you you are under oath --

MR. RICHMAN: Objection, your Honor. There is no need for that.

MR. FISHER: If your Honor please, could the next question be firstput at the side bar? I have a feeling it is going to be objectionable, your Honor.

THE COURT: Mr. Fisher, you may be right, but unfortunately the only intuition I can go by in this courtroom is my own. I don't know yet.

MR.CURRAN: May I, your Honor, have just one moment?

THE COURT: All right.

(Pause.)

Q Did you ever tell Richard Forbrick when you were visiting with him at the animal hospital at any time that one time you had looked through the basement window of Tolopka's house and had seen Tolopka with white powder and a scale?

MR. SIEGAL: I object to it, if your Honor please.

Q Yes, or not. Yes, or not.

MR. SIEGAL: Object to it, if your Honor please. Certainly not binding on Tramunti and not a proper question.

THE COURT: It is not binding on Tramunti, but I think it is a proper question.

A I will answer the question. No, I have never seen Ben Tolopka -- I don't know what heroin looks like.

Q Let me ask the question again, Mr. Stasio, because you didn't respond to the question I asked you.

MR. RICHMAN: Objection, your Honor.

THE COURT: No, no. I think he did respond

to the question.

MR. CURRAN: Your Honor, if I may, the question was whether he ever told that to Forbrick.

THE COURT: All right.

MR. CURRAN: I submit, your Honor, he did not respond.

THE COURT: Did you ever tell it to Forbrick?

THE WITNESS: I did say I never did.

Q You never told that to Mr. Forbrick?

A Or no one else, no, sir.

Q Did you ever tell Mr. Forbrick at the animal hospital that you had seen numerous black people entering and leaving Tolopka's house? Yes or no.

MR. RICHMAN: Objection, your Honor.

A No, I have never told Richard Forbrick.

MR. SIEGAL: Object to it, if your Honor please.

THE COURT: He said no, he never made such a statement. I will permit it.

MR. WARREN: Your Honor, I think it is inappropriate that the whole line of questioning is pursued about what he said to someone else when there has been no direct that needs to be contradicted or repeated.

THE WITNESS: Seems like Richard Forbrick

is taking a beating.

THE COURT: Hold on.

THE WITNESS: I mean, let's face it.

THE COURT: Mr. Stasio --

THE WITNESS: Like Richard Forbrick is the kingpin.

THE COURT: The only people who can make speeches in the courtroom are the lawyers, and only if I permit them. Most of the time the only person that can make a statement is me.

THE WITNESS: I am sorry. I lost my head there.

THE COURT: That is all right. I assume it's the first time you are testifying.

Mr. Curran and Mr. Richman, come on up here. Now I get those vibrations.

(At the side bar.)

THE COURT: What is the next? Is there any more tothis?

MR. CURRAN: Yes, your Honor. Mr. Stasio has complained about just referring to conversations with Mr. Forbrick and I just wanted to do it in order.

Now, since he said that he not only never told anybody he saw powder down there, but that he never saw

powder down there, when he responded the first time to my question, I now propose to ask him about a meeting he had with Agent Shutes and two other officers within about five or six weeks ago, the middle of January -- and I will give him the date -- when they went to see him at his house. I am going to ask him whether he ever told them that he had seen black people coming in, frequenting the defendant Tolopka's residence.

I also propose to ask him, your Honor --

MR. SIEGAL: Could I stop you a minute? What about black people? I don't get the issue.

MR. CURRAN: I will be glad to explain it. According to the proof on the goverment's direct case, on one occasion at least the defendant Tolopka's customer in the basement when Barnaba delivered the cocaine to Tolopka was a black man named Jimmy, as I recall. That was in 1970, according to the government's case. That is the purpose of it, Mr. Siegal.

MR. SIEGAL: I see.

MR. CURRAN: The other question which I propose to ask, and I believe it would be the last one, your Honor, is whether he ever even jokingly told Forbrick that Tolopka was involved in the drug business.

MR. SIEGAL: Jokingly? What do you mean,

kokingly?

MR. CURRAN: I am going to ask him if he ever joked about it and then I am going to ask him the question --

MR. SIEGAL: What kind of business is this? Aren't you getting pretty close to a mistrial? You are just gilding the lily.

MR. CURRAN: I will give you what the proof is, Mr. Siegal.

MR. SIEGAL: That is not proof. Jokingly is not proof. You are gilding the lily and you are right on the line.

MR. CURRAN: If I can finish, your Honor.

THE COURT: Go ahead.

MR. CURRAN: If he was asked if he ever told anyone even jokingly that Tolopka was in the drug business and his answer was he could not recall that he had and that the only person he might have said something jokingly to was Richard Forbrick.

MR. SIEGAL: I object to the form of that question.

THE COURT: I don't care about your objection to the form of the question because I am not going to permit it any way.

MR. ELLIS: What about white people coming in and out of the house?

MR. SIEGAL: We understand. We got past that already.

MR. CURRAN: What about the first question, your Honor, with respect to black people?

MR. RICHMAN: I don't understand.

MR. CURRAN: I will make it very simple. He said in the presence of his wife and three agents that they had seen black people frequenting Tolopka's house from time to time. He said that six weeks ago. I want to ask him about it.

MR. SIEGAL: I want to say something to you. Look over at that jury.

THE COURT: No, I don't think you should.

MR. SIEGAL: You better not.

THE COURT: So far as a character witness, this guy has turned out to be --

MR. SIEGAL: This is beautiful. Any minute now I have to get a mistrial, any second.

THE COURT: I don't think you ought to go any further into this. I don't think you ought to even ask the questions which you propose to ask, the three questions, whether he ever said that the place was

frequented by black people, whether he ever said even jokingly -- that is out completely -- and I guess the third one was --

MR. CURRAN: I think you have covered it, your Honor.

THE COURT: -- the white powder one.

MR. CURRAN: Yes.

THE COURT: I just don't think --

MR. CURRAN: All right.

(In open court.)

MR. CURRAN: I have no further questions, your Honor.

MR. RICHMAN: No further questions, your Honor.

THE COURT: All right. You can step down, sir. Return to the witness room, please.

(Witness excused.)

MR. RICHMAN: At this time the defense calls --

MR. CURRAN: Your Honor, before --

THE COURT: Hold it. Before we go any further I am going to ask the clerk to open some windows in this place. In view of the fact that opening windows in courtroom 110 of this building constitutes

a threat and danger of harm to person and property, I am going to ask the jury to step out for a moment.

(The jury left the courtroom.)

MR. CURRAN: Your Honor, before the recess, in the light of the witness' answer to my questions about his basis for the reputation for truth and veracity, I move to strike the witness' testimony in that respect.

MR. FISHER: I would agree to strike the entire testimony, your Honor.

MR. CURRAN: No, your Honor, I wouldn't agree to that.

THE COURT: No, I didn't think you would.

Let me think about it. I know the case, I know the facts. I have to just get the name.

All right, gentlemen.

MRS. ROSNER: Michaelson?

THE COURT: No, that is not it. We are going to take seven to ten minutes ourselves. Come back here at 3 o'clock.

Mr. Siegal, I want to see you in the robing room

(Recess.)

(In open court, jury not present.)

THE COURT: Mr. Richman, do you intend to call another witness out of order or is Mr. Tolopka going to take the stand?

MR. RICHMAN: One more, your Honor.

THE COURT: All right. Bring back the jury, please.

(Jury present.)

THE COURT: All right, ladies and gentlemen, we are continuing with witnesses out of order.

Mr. Richman, do you want to call your next witness?

MR. RICHMAN: Patricia Ann Puchalski.

P A T R I C I A A N N P U C H A L S K I, called as a witness by defendant Tolopka, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RICHMAN:

Q Mrs. Puchalski, are you the daughter of Benjamin Tolopka?

A Yes.

Q Are you married?

A Yes.

Q Do you have any children?

A Four.

Q Youare the owner of a house in upstate New York, is that correct?

A Correct.

Q Will you tell us where that house is located?

A On Hicks Road in Jordanville.

Q And when did you buy that house?

A 1965.

Q You bought that together with your husband?

A Yes.

Q Can you tell us what your husband does for a living?

A He drives an oil truck and he also delivers milk.

Q In other words, he has two jobs?

A Yes, most of the time.

Q I direct your attention to every summer. Does your mother and father come up to visit you during the summer?

A Yes. In fact, they stay up there longer than I do because the children are in school until the end of June and they usually go up there early.

Q Is it a fact that they usually go up there in May of the year to open up the house?

A Yes, yes, and they put a garden in.

Q And when do they close the house, if you know?

A Oh, October.

Q Middle or end of October?

A Towards the end of October.

Q I direct your attention to -- by the way, what did you pay for the house when you bought it?

A $3800.

Q I direct your attention to the general practice in which your father takes his summers at the house.

Does he stay at the house all summer long?

A No. He works at the race track every other week.

Q And does he work on a set nasis, some kind of a system?

A Yes. One week on and one week off.

Q And when he works on, do you know the hours in which he works?

A Five o'clock until 12.

Q Midnight, is that right?

A Yes.

Q And does he come up the next day?

A Yes, the next morning.

Q Generally he finishes off on a Saturday, does he not?

A Right.

Q So midnight Saturday he would finished?

A Right. And then he would come upstate say Sunday morning, he would get there usually about 9 or 10 o'clock.

Q Is it your testimony that he comes up there all the time on Sunday?

A Yes. He used to bring us the city newspaper, the Sunday News, and rolls and buns for breakfast. We would wait for him.

Q That is every Sunday, is that right?

A Yes.

Q Do you remember any occasion at least in the last four or five years in which he didn't come up the day he finished work?

A No, I don't.

MR. RICHMAN: I have no further questions.

MR. CURRAN: No questions, your Honor.

THE COURT: All right. Does anybody else wish to inquire?

All right. You may step down, ma'am.

(Witness excused.)

MR. RICHMAN: Your Honor, at this time I would just like to show the picture to the jury of Ben Tolopka's house while the transition occurs.

THE COURT: All right.

B E N J A M I N T O L O P K A resumed.

DIRECT EXAMINATION CONTINUED

BY MR. RICHMAN:

Q Mr. Tolopka, will you tell me --

THE COURT: Hold on for a second, please.

Ladies and gentlemen, you recall this morning we had arrived at that point in the testimony of Mr. Tolopka where you were reviewing the number of commendations received by Mr. Tolopka, and also you reviewed his application to the Police Force. We took the other witnesses out of order and we are now going back to the direct examination of Mr. Tolopka.

All right, Mr. Richman.

Q There came a time on July 2, 1966 when you retired from the Police Force, is that right?

A That's correct.

Q And when you retired you received a pension, I assume?

A That's correct.

Q Could you tell us what that pension is, in

what amount?

A It is $7400-plus a year.

Q 7400 and change, about 7432?

A Could be.

Q And you went to work some place else, is that right?

A I went to work at Yonkers Raceway.

Q Did you take a period of time for vacation or rest?

A No. I started while I was on my terminal leave

Q In other words, you were continuously working since you started with the Police Department?

A That's correct.

Q And how long have you been working with the Police Department -- I mean with the Yonkers Raceway?

A It will be eight years in April.

Q And could you tell us what you earn there?

A What was that?

Q What do you earn? How much do you make?

A Oh. Right now $36.50 a night.

Q And how often do you work there?

A Well, I work more than half of the meet, as a rule.

Q In other words, just about half or more than half of the racing season?

A More than half. During the winter months I work steady; during the summer months I work one week on and one week off.

Q Do you do anything else?

A I sell jewelry on the side.

Q Do you have a tax number for that?

A I do.

Q I show you this document entitled "Certificate of Authority" from the State of New York. Is that your taxpayer's identification number for your jewelry business?

A It is.

Q Where do you buy that jewelry?

THE COURT: Hold on. Let us have that document marked as an exhibit for identification.

(Defendant Tolopka's Exhibit D was marked for identification.)

THE COURT: Do you remember the last question, Mr. Tolopka?

THE WITNESS: Yes.

THE COURT: All right. Answer it. Where do you buy your jewelry?

THE WITNESS: Canal and Bowery, in various stores there.

Q Is that generally at the Paramount Jewelry Exchange?

A The Paramount and one next to it.

Q Let me go back a while, if I may.

Can you tell us when you purchased that house again, the house where you live?

A 1951.

Q What did you pay for the house at that time?

A 11,500.

Q Do you have any mortgage on it at the present time?

A No, I never did. I paid for it.

Q During the years 1970, '71 and '72 your income was from your pension and from the track, essentially, is that right?

A That's correct.

Q And did you file an income tax return for those years?

A I did.

Q I show you these documents. Are these copies of your income tax returns for those years?

A I handed them to you, yes.

THE COURT: Let us have them marked for identification.

(Defendant Tolopka's Exhibits E and F were marked for identification.)

MR. RICHMAN: At this time, your Honor, I would offer them as Defendant's D, E and F in evidence.

MR. CURRAN: Might I look at them, your Honor.

THE COURT: Yes, absolutely.

(Pause.)

MR. CURRAN: Your Honor, I have no objection if we might have a little time to look at the documents and Mr. Richman wants to continue his examination --

THE COURT: Yes, why don't you do that.

3B

Q While the documents were being marked, Mr. Tolopka, I put a piece of paper on your desk.

Does that represent the drawing you made for me at my request?

A It does.

Q What is that a drawing of?

A The downstairs of my home.

Q And could you describe it to the jury?

A Yes.

You come in from 233rd Street and I have an open porch, and you come into a vestibule about 8 x 8 foot with a door leading thereto, then there is another door leading into another vestibule about, oh, 8 x 8 again, and if you go straight ahead there is another vestibule that runs about 12 feet and it is about 4 feet wide with a bathroom on the left and at the end of the 12 feet there is a stairway with three steps, a platform, and then four steps.

Q And that goes to where?

A To the basement.

Q And can you describe the other rooms on that floor?

A Well, to the left of the second vestibule is the dining room and from the dining room there is a doorway leading to the kitchen, I have a pantry there, and to the

right of the second vestibule I have a living room.

Q You were sitting here during the testimony of John Barnaba, were you not?

A I was.

Q Did you know John Barnaba?

A I do.

Q And did you know him by another name?

A Yes. I knew him as John Bonneville.

Q Will you tell us how you met John Bonneville or John Barnaba?

A The first time I met him I was up-State. I have a sister that lives in Clinton. I was going to see my sister and Fred Lalli and his wife were going to visit John Bonneville and they stopped there first, and that was the very first time I saw him.

Q When was that, what year?

A Oh, that was probably '67 or so.

Q And when did you see him for the next time?

A The next time I saw him was in 1970.

Q Could you tell us the circumstances under which you saw him?

A Yes.

Q And the approximate time.

A While I was up-State in 1970, about April or

May, my wiring on my car went on fire and my wiring burnt up and the car had to be towed to a shop, so that when I got back I needed a car.

So I wanted to get something old while that was being fixed, and I went to his lot that is in the neighborhood, used car lot. I knew one of the fellows there and they again introduced me to John Bonneville. I didn't remember him from the time I met him up-State.

He told me he could get me a car. So I gave him my name, I gave him my telephone number.

About two days later he came to the house and he told me he's got a nice car for me, it's an old car, it's going to cost $500, but he needed $300 as a deposit.

So I gave him the car and he -- I gave him the money and he told me he would bring the car the next day. He never came back, so I went looking to the car lot for him and nobody say him there.

I kept going back looking for him and I couldn't find John Bonneville no more.

So the next time I saw him was about in November of 1970. At that time I spotted him by the lot and he and I got into an argument over my $300 and we threw some punches and eventually he went inside and he brought out my $300.

Q He gave you back the money?

A He gave me the money back and kept screaming. He is telling me he will get even with the Pollacks on account of that, and me and him didn't speak to each other again for a long time.

Q Did this happen in November of 1970?

A This happened in November, because at that time I had already gotten another car and in checking I registered it, I believe, November 3rd of 1970.

Q When for the next time did you see John Barnaba?

A Well, I saw him a few times around the neighborhood there, but we didn't speak.

Next time I saw him was the summer of 1971, while I was working, he came to the track and I guess he spotted me,because he came over and he said, "I want to apologize for the disagreement we had or the fight we had."

So we shook hands and I said -- I asked him why he did that. He said he didn't intentionally try to beat me, he said he had to run away because some kidnappers were after him.

Q Where did he go, did he tell you?

A He said he was over in California with his brother.

Q And this is during the year 1970?

A This is parts of 1970. I understand he came back and forth a few times, but I could never find him.

Q When after the spring of 1971 did you see John Barnaba again?

A Oh, I saw him a few times by the lot after that. I used to get my gas there and this fellow Paul used to run the lot and he is a retired jeweler, so I used to stop in there and he would be telling me how to check jewelry, this and that, so I saw him there a few times after that.

Q You didn't socialize with Barnaba, did you?

A Never,never had a cup of coffee with Bonneville.

Q Did you consider him a friend of yours?

A No, I don't, especially now.

Q I direct your attention now to May or June of 1973. Did you have an occasion to have John Barnaba come to your home just recently?

A Yes.

Q And what was the purpose of his coming to your house?

A Well, first I got phone calls from John Bonneville.

Q And?

A And he called me up and wanted a wristwatch for his daughter. He told me his daughter was going to

graduate and he wanted to know if I would get him a wristwatch, and I kept telling him my wife had the stroke and I can't get out of the house, I can't go downtown.

So then eventually one night he came there, came on my porch, and I went out there and spoke to him again and again he asked me about the wristwatch and again I told him I can't get it for him. I even offered to send him down there to get it, but he says, "Don't get it until I let you know."

Q That was the last time you saw him before this trial?

A That is the last time I saw him up until this trial.

Q You heard Mr. Barnaba testify that he had a narcotics transaction with you in August of 1970.

A I heard him.

Q Did he have a narcotics transaction with you?

A He never had no narcotic transaction. He never came to my house at that time when he says he was there.

Q Has he ever been into your basement?

A He was never in my basement.

Q What were you doing during the period of August, the end of August, 1970?

A Well, I was either working or I was up-State.

Q Can you be more specific as to dates you were working?

A Well, I haven't got the dates here with me.

Q I show you this document. Would this refresh your recollection as to what dates you were working?

A I think -- oh, unless it is --

THE COURT: Have it marked.

MR. RICHMAN: Your Honor, if I might, I would like to offer the diagram as, I believe, Tolopka's Exhibit G for identification and in evidence.

THE COURT: All right. Mr. Tolopka, the diagram which is your Exhibit G for identification --

MR. CURRAN: No objection.

THE COURT: You might not have any objection, but they might.

Is that an accurate --

THE WITNESS: As accurate as I can make it. I am not that good at drawing.

THE COURT: That is an accurate representation of the first floor of your house?

THE WITNESS: Yes.

THE COURT: Does defense counsel wish to inspect it?

tp9 Tolopka-direct

No.

All right.

Does anybody have any objection?

All right. Exhibit G for defendant Tolopka is received.

xx (Defendant Tolopka's Exhibit G received in evidence.)

xx (Defendant Tolopka's Exhibit H marked for identification.)

THE COURT: Show it to the witness.

Mr. Richman, you started a question, I believe, showing Exhibit H. Do you want to repeat it?

talking August, 1970?

MR. RICHMAN: August of 1970.

THE COURT: We are talking about August of 1970.

A I do this all the time.

THE COURT: August, 1970, particularly.

A When I work that shift I leave the house about 10 or a quarter to 5 and I get there 5 o'clock, five after sometimes.

Q So it's your testimony at least for those particular days that you were at the track, is that right?

A Positively.

Q You keep a memorandum book as part of your requirements as a security officer at the track, do you not?

A I do.

Q I show you these documents. Are these the memorandum books that you keep?

A Yes, they are.

THE COURT: All right. Mark them for identification, please.

xx (Defendant Tolopka's Exhibit I marked for identification.)

Q I would respectfully request, Mr. Tolopka, if you would turn those books -- I believe there are two

books encompassing that time period -- to the date in August you say you started working your most recent tour.

MR. CURRAN: Your Honor, may I ask if this is for refreshment of recollection.

THE COURT: I don't know.

MR. CURRAN: I object if it's not.

MR. RICHMAN: If the Court pleases, I would offer those portions of that book that pertain to the time period as Defendant's I in evidence.

THE COURT: All right. Take a look at them, Mr. Curran.

MR. CURRAN: Your Honor, may I ask are both books being offered as Exhibit I for identification.

THE COURT: I gather they are, those portions which cover the period.

Q While you have those books in your possession, would you turn to the early part of October of 1970.

A Yes.

Q Would you tell us if it refreshes your recollection as to when you were working in the early part of October?

A I worked October 1st, 2nd --

MR. CURRAN: Your Honor, may the record show the witness is reading from the book in response to the question.

THE COURT: Yes.

THE WITNESS: I am.

A The 1st, 2nd and 3rd of October.

I was off October 4th to the 11th.

Then I worked 12th, 13th, 14th, 15th, 16th and 17th, and I was off -- well, the track closed.

Q Now, when you were notworking at the track, where were you?

A I would go up-State to the Town of Warren.

Q What was the practice?

A Well, the night I finished, if I finished Saturday night -- we generally finished pretty late Saturday; Saturdays is a late night; probably quarter after 12 or so, 12.30 -- I would go home and get four, five hours sleep, set the clock for about 5 o'clock in the morning, and I would leave the house, I would stop on White Plains Road and pick up a newspaper, go to Katonah Avenue and get rolls and buns, and I would up-State.

Q Was that your practice everytime?

A My practice every summer, yes, from spring till fall.

Q You never deviated from that?

A No, not that I remember.

Q Any day in 1970 that you recall that you didn't

go up there after you finished your tour of duty at the track?

A No, I don't.

Q So these events that Mr. Barnaba testified to could not have happened, could they?

MR. CURRAN: Objection, your Honor.

A Impossible.

MR. CURRAN: Objection.

THE COURT: Sustained.

MR. CURRAN: Move to strike.

THE COURT: Yes, granted.

Q Did they happen, Mr. Tolopka?

A No.

MR. CURRAN: Objection, move to strike.

THE COURT: No, I will permit it. Go ahead.

Q Please answer the question.

THE COURT: He has already answered the question.

MR. RICHMAN: I didn't hear the answer. I was listening to Mr. Curran's objection.

A I said no.

Q Mr. Tolopka, before the date of your arrest did you know any other person in this room, any other defendant in this case?

A I never saw any of these defendants before this

time in my life, I never spoke to any of them, never associated with any of them, don't know them at all, and they didn't know me.

Q I direct your attention to December of 1973, just two and a half months ago. Is that when you were arrested?

A It was.

Q Can you tell us what happened at that time?

A I was going to work on --

MR. CURRAN: Objection, your Honor.

THE COURT: Yes. I think this may be far afield, irrelevant.

MR. RICHMAN: I withdraw it, your Honor.

Q In any event, you were not arrested until December, 1973?

A That's correct. I wasn't indicted until December 5, 1973.

THE COURT: All right. Don't volunteer, Mr. Tolopka.

MR. RICHMAN: If I might have a moment, your Honor.

THE COURT: Sure.

(Pause.)

MR. RICHMAN: I have no further questions.

THE COURT: Wait a second. I just want to make sure. Are you offering those memo books and that other --

MR. RICHMAN: At this time, your Honor, I offer everything except the letter from the track that refreshed the recollection of Mr. Tolopka.

THE COURT: All right.

MR. RICHMAN: I respectfully request the jury have the opportunity to look at them at this time.

MR. CURRAN: Objection to the memo book, your Honor.

THE COURT: Let me see it.

Anybody else have any objection?

MR. FISHER: May I confer with Mr. Richman?

THE COURT: Sure.

All right. Exhibit D will be received in evidence.

2 xx (Defendant Tolopka's Exhibit D received in evidence.)

MR. RICHMAN: If your Honor pleases, I would offer the tax forms in evidence as well. I believe Mr. Curran is making a decision as to what he wants to do.

MR. CURRAN: Your Honor, I have what have been marked E and F for identification for 1971 and 1972. I have no objection.

THE COURT: All right.

MR. CURRAN: I thought Mr. Richman had referred, however, to three returns in his questions.

THE COURT: No, I don't think so.

MR. CURRAN: All right. No objection, your Honor.

THE COURT: Does anybody else have any objection to Mr. Tolopka's tax returns?

All right. Received in evidence.

xx (Defendant Tolopka's Exhibits E and F received in evidence.)

THE COURT: Does anybody else have objection to Defendant's Exhibit I, the memo books?

All right. They are received.

xx (Defendant Tolopka's Exhibit I received in evidence.)

MR. CURRAN: Your Honor, might I ask if the memo books are being received in their entirety or the portions to which Mr. Richman addressed questions.

THE COURT: I assume it's only the portions to which the questions were addressed.

MR. CURRAN: I am entirely in your Honor's hands. I just raised it.

THE COURT: I assume it's only for the period of

time.

MR. RICHMAN: That is only what the offer is for, your Honor.

THE COURT: The only way we can do it is if necessary at some time to break them apart. I don't think we have to do that now.

(Pause.)

MR. RICHMAN: No further questions, your Honor.

THE COURT: All right. Mr. Curran, you may inquire.

MR. CURRAN: Thank you.

Might I have the defense exhibits, please.

MR. RICHMAN: Your Honor, I don't believe the memo books were shown to the jury.

THE COURT: No, they weren't shown to the jury, Mr. Richman. I suggested that if we get down to where we have to show them to the jury we will have to split them apart. You want to do it now?

MR. CURRAN: Whatever your Honor wishes.

MR. RICHMAN: I would wait until tomorrow morning, your Honor.

THE COURT: All right, fine.

CROSS EXAMINATION

BY MR. CURRAN:

Q Mr. Tolopka, you were a detective for about how many years altogether?

A Nineteen or 20.

Q And a patrol officer or uniform patrolman for the first five, four?

A First three and a half or four, I guess.

Q Detective is the civil service rank of patrolman, is that right?

A It's not a civil service rank. It's a promotion.

Q Patrolman is a civil service rank?

A That's correct.

Q You are assigned to the Detective Division?

A That's correct.

Q While you were a detective you testified in court many times?

A I did.

Q Made many cases?

A I did.

Q When were you assigned to the 28th, from what year to what year?

A From 1946 till 1958.

Q That was entirely as a squad detective there?

A That's correct.

Q And from 1958 until your retirement you were assigned to the 5th Squad?

A That's correct.

THE COURT: I thought the testimony was the 5th Precinct. Is that the same thing?

THE WITNESS: Well, it's the same thing.

THE COURT: Is there a difference?

THE WITNESS: No. Each precinct has a squadroom and the detectives are generally upstairs in the squadroom.

Q When you were working as a detective in the 28th were you assigned to narcotics cases as such?

A Assigned to them?

Q To investigate them.

A Yes, I had some investigations on narcotics cases.

Q By assignment?

A Yes. Not from the Narcotics Squad. Out of the squad.

Q And you made narcotics arrests in that period?

A I did.

Q Made many of them?

Q Quite a few I would say.

Q About how many would you estimate?

A Oh, I have no idea.

Q Twenty?

A At least.

Q Maybe more?

A Maybe more.

Q Did you make cases involving both heroin and Cocaine at different times?

A I did, and marijuana.

Q About how many times would you say that you made a cocaine case or arrest?

MR. RICHMAN: Your Honor, I would object to this and request a side-bar.

THE COURT: You want --

MR. RICHMAN: I object to the word "make," unless Mr. Curran is making this case.

THE COURT: No, I will permit it. It is common police parlance.

Q You undstood what I meant, didn't you, Mr. Tolopka?

A Did I make arrests for it?

Q Yes. You understood that?

A Yes. I made arrests, yes.

Q And you understand the word "make"? I didn't use that in any sense that you didn't understand, did I?

A No, not to make arrests.

Q Did you make cocaine arrests?

A I did.

Q About how many?

A I have no idea. Have to get the records.

Q Would it be fair to say that it was more than 10?

A Possibly.

Q As an experienced police officer who made arrests in cocaine matters you knew that cocaine was not legally in the United States, didn't you?

A No, I know it is legally in the United States also.

Q And the arrests that you made for cocaine, did any of those cases involve cases of cocaine legally in the United States?

A Possibly.

Q Don't you know what happened to the cases after you made the arrests?

A Yes.

Q Were any defendants let go because the cocaine was --

A I never had any --

Q Might I finish the question, Mr. Tolopka?

MR. FISHER: Objection, if your Honor please.

RM. CURRAN: I have no objection, but may I finish the question.

THE COURT: Finish the question first and then we will hear the objection.

Q In any of the cases which you made involving cocaine, to your knowledge, did any of those defendants get acquitted because the cocaine was legally in the United States?

MR. RICHMAN: Objection, your Honor. That is a federal thing.

THE WITNESS: I will answer that.

THE COURT: Now I have a dispute between lawyer and client.

I gather, Mr. Fisher, you also had an objection before or started to.

MR. FISHER: Yes, your Honor.

THE WITNESS: Should I answer that?

THE COURT: Don't be so anxious.

THE WITNESS: Mr. Curran is looking at me, so I didn't know.

THE COURT: No, he was really looking at me.

All right. I will sustain the objection. Go ahead, next question.

Q When you were a detective, Mr. Tolopka, did you know whether possession of cocaine was a violation of federal as well as state law?

A No, I didn't. We didn't have the same laws as you do.

Q No, that wasn't what I asked. Did you know it was also a federal crime as well as a state crime?

A I would say yes.

Q You knew that?

A Yes.

Q And the same was true of heroin, was it not, to your knowledge?

A Yes, to my knowledge, yes.

Q When you were a police officer and a detective those 24 years approximately did you have any income other than from your job as a police officer?

A Did I work another job? Is that what you are saying?

Q All right, let's start with that.

A No.

Q Did you work another job?

A No.

Q You did not?

A No.

Q At any time?

A No.

Q While you were a police officer?

A No.

Q Now let me ask another question. Did you have any other income from any source while you were a police officer?

A Well, my wife worked for a while, if that's income.

Q Did your wife work while you were a police officer?

A I believe she did, the first year or two.

Q Up until about '44?

A Well, she worked part of the time when my daughter was born. Maybe '43.

Q For a year or two?

A Yes, and all the time before that.

Q After, let's say, 1944 did Mrs. Tolopka work and earn income?

A No.

Q After 1966, when you retired, had Mrs. Tolopka worked, before her sickness or her illness?

A No.

Q Other than your work with Yonkers Raceway, have you earned any other moneys working since 1966?

A Since 1966?

Q Since your retirement.

A Yes.

Q Is that selling jewelry?

A A little of it.

Q Any other income?

A Well, whem I am upstate sometimes I give somebody a hand, they might throw me a $10 bill, or something like that. It's not much of an income, but helping the farmers may bring me some fertilizer or something for the garden.

Q Other than that?

A No. Just pension and Yonkers

Q Now let me ask you, other than your salary when you were a police officer and the moneys which you earned after you retired by way of your jewelry sales and your work at Yonkers and, of course, your pension, you or Mrs. Tolopka have any other sources of income, whether f from jobs or anything else?

A I don't earn anything anywhere else, no.

Q Do you have any other money which say earns

interest?

A Yes. Money in the bank earns interest.

Q How much money in 1970 did you have in the bank earning interest, approximately?

A 1970?

Q Approximately.

A Oh, between 30 and 40 thousand, I would say.

Q And was that moneys that you had saved over the years as a police officer?

A That's correct.

Q What was your top salary when you retired in 1966 as a third grade detective, what were you making anually?

A I think around 13,000 or so.

Q Might it have been less than 13,000?

A Maybe dollars less, not too much less.

Q Might it have been 11,313?

A No. It was 12-something.

Q You are certain of that?

A I am quite certain.

Q You are certain it wasn't 11,313?

A No, can't be, because I get half of my pension -- half of my salary. I am almost positive it was 12,000-something.

Q Hasn't there been some slight increase in your pension since you retired?

A No, no, none. I get the same pension all the time.

Q Didn't you originally get about $6800?

A No. Well -- pension?

Q Yes.

A Well, they adjusted it one time, but they adjusted it because I went back in the job. I retired, I pulled my papers back out, and I went back to get an increase.

Q You retired July 1, 1966?

A Yes, but I was supposed to retire before that.

Q But your final retirement was July 1, 1966?

A I think it's July 2nd.

Q July 2, 1966?

A Yes.

Q And was not your annual pension at which you retired back in 1966 about $6800?

A Well, technically, no, because then I got back pay. The pension that I retired on started as of July 1, 1966. They might have sent me some checks based on 6800, but then they made up the difference.

Q And it is --

A It is 7400 whatever.

Q And it is your testimony in any event you were making in the area of 12 to 13 thousand dollars when you retired?

A That's to the best of my recollection, yes.

Q And in 1970 it is your testimony that you had how much money in the bank?

A Oh, I'd say between --

MR. RICHMAN: Asked and answered, your Honor.

MR. CURRAN: I didn't recall the answer, your Honor.

THE COURT: All right. Go ahead, let it go.

A Between 30 and 40 thousand.

Q And that was earning interest?

A It was. I hope so.

Q You received income on it?

A Yes.

Q In addition to the 30 to 40 thousand dollars that you had in the bank in 1970 did you own any securities?

A Some stocks.

Q About how much were they worth in 1970, approximately?

A Oh, I have no idea. Maybe 15,000.

Q And there was dividend income on them?

A There was. There still is.

Q And the 30 to 40 thousand dollars that was in the savings bank in 1970, did that accumulate steadily over the years or did that come in lump sums?

A Steadily over the years, and when I retired they gave me $13,000 in cash out of the pension fund.

Q And you put that in the savings bank?

A I did.

Q All of it?

A All of it.

Q Deposited that in the bank?

A Oh, positively.

Q And how much did you save as you went along over the years to make up this 30 to 40 thousand?

A How much?

Q Yes.

A I have been working for 40 years, Mr. Curran, and I try to save two, three thousand a year. I should have much more than that.

Q Were you saving two, three thousand dollars a year when you were a patrolman in 1942?

A I certainly was.

Q What were you making in 1942 as a patrolman?

A Oh, I don't know. When I started I wasn't making it.

Q You started with $1,320 a year, didn't you?

A Six months.

Q You didn't save two to three thousand in that period, did you?

A No, not the first year, but I saved more than that later on.

Q The second year, in 1943, your salary was $2000 a year, right, approximately?

A I don't recall.

Q Does it sound about right?

A No, I think it was more. It doesn't sound right.

Q How much was it more?

A I know it was $2000 --

Q In 1945 wasn't a patrolman making 2520 or almost R3000?

A It was almost $3000 I think once you passed your probation period.

Q And how long were you a patrolman at $3000?

A Three years and some months.

Q In those three years you didn't save two to three thousand dollars, did you?

A I might have. I'm very tight.

Q That would be -- I think if you can do it that way it would be more than tight.

MR. RICHMAN: Objection to the comment by counsel.

Q In any case, Mr. Tolopka, beginning when you became a detective, were you able to save more money as your salary increased?

A I guess so.

Q And when did you buy the securities which you held in 1970?

A Oh, when did I buy them? It started, the first time I bought something was probably in '47 or '48.

Q Were those the same securities you owned in

1970?

A Well, some of them. My broker sold some and then keeps buying them and changes it around, but they started with the same secruities.

Q You have had a stockbroker who handled your account?

A Yes.

Q What brokerage firm?

A Well, I had Thomson & McKinnon and a fellow by the name of Israel.

Q In 1970 who was your broker?

A 1970 it's Israel.

Q Were you buying and selling securities in 1970?

A I don't know about 1970. I don't know what years I actually bought and sold.

Q You don't remember back in 1970 whether you bought or sold stock?

A No, no, I don't remember.

Q How about 1971?

A Possibly. I don't remember though. I'd have to look it up.

Q 1972?

A I don't remember selling or buying any in '72.

Q I think you testified you bought your house, the one on East 233rd Street --

A That's correct.

Q -- in 1951, is that correct?

A Right, right.

Q I believe you testified you paid $11,500?

A I think it was eleven-five. Eleven or eleven-five. I'm not positive.

Q And mo mortgage?

A No mortgage. I paid cash for it.

Q Was that cash which you had saved since 1942 --

A That's right.

Q May I finish the question just so we are sure what I am asking?

Is that also cash you saved since 1942 when you became a police officer?

A Saved it before that even. I worked before '42, Mr. Curran.

Q What were you making in 1941?

A How much was I making?

Q Yes.

A Well, I was working for the Sanitation Department. I think it was 1860 a year.

Q One thousand eight hundred sixty?

A Yes.

Q And was some of that money you saved before you became a police officer used toward your house?

A It was.

Q And the money you saved while you were a police officer, was some of that used?

A It was.

Q When you paid for the house in cash in 1951 did you still have cash in the bank?

A A little.

Q How much?

A I don't remember.

Q About?

A Probably a few hundred dollars.

Q So the 30 to 40 thousand dollars and the securities were all put into the bank and acquired after 1951, is that right?

A Yes.

Q With money you saved as a police officer?

A That's correct, police officer and since I've been working.

Q Did any of that money come from your jewelry work?

A I didn't sell jewelry then.

Q No, at any time up to 1970.

A No.

MR. CURRAN: Withdraw it. I'm sorry.

Q In 1970 were you selling jewelry?

A A little.

Q How much would you say you made in 1970 from jewelry sales?

A Well, I was more or less doing favors for people in 1970.

Q How much would you estimate you made in 1970 from jewelry sales, approximately?

A Maybe a couple of hundred.

Q Did you report it on your tax return?

A No, I didn't.

Q You didn't think it was a sufficient enough amount?

A No. It cost me a lot of money to come down here from uptown, back and forth, so the expense would probably cover what I spent -- what I made.

Q So you figure your expenses cancelled out what you earned?

A I would think so.

Q What about 1971, how much money did you make selling jewelry in 1971, approximately?

A I didn't make much money until 1973.

Q You didn't make much in '71 or '72?

A No, not too much.

Q Did you make any?

A Probably a couple of hundred dollars.

Q Did you ever report it on your tax return?

A No.

Q It is only in '73 that you made some money in jewelry, is that it?

A Yes, this past year I made, because then I was bonded and I wanted to start a business. I wanted to get a place, even, secondhand dealer's license.

Q Your tax return for 1973 hasn't been filedyet, has it?

A I haven't had a chance. I'm here every day.

Q Mr. Tolopka, in 1970 you had income from your savings and from your securities, right?

A Yes.

Q And from your retirement pay?

A Yes.

Q And from your work at Yonkers?

A Yes, and Unemployment, also.

Q And that's it, is that right?

A And Unemployment. I get Unemployment when I'm not working.

Q Is that the extent of your income?

A In 1971, yes.

Q In '70?

A '70.

Q That is the only income you had?

A Right.

Q And Mrs.Tolopka had no income in 1970 of her own?

A No, she didn't work.

Q When did you first get into the jewelry business?

A Oh, when I first went to work in the Fifth Squad

the fellows used to go in there and talk to the jewelers and so forth.

Q Some time after 1950-?

A '58.

Q The Jewelry Exchange which you mentioned is in the jurisdiction of the Fifth Squad?

A That's correct.

Q I think you testified that you first met John Barnaba, whom you knew as John Bonneville --

A Everybody knew him as Bonneville.

Q That is how you knew him?

A That's correct.

THE COURT: Let me just suggest, it seems to me at this point that your cross-examination is moving from one area into another. Is that correct?

MR. CURRAN: Yes, your Honor.

THE COURT: I know it is not exactly our normal qutting time, but it is close enough and since I do have to break up your cross-examination I will break it up hopefully at a logical spot.

Am I?

MR. CURRAN: Yes, your Honor.

THE COURT: Okay, fine.

Ladies and gentlemen, go with the marshal, please.

(The jury left the courtroom.)

THE COURT: All right. Let me just remind you all that the requests to charge is due at 10 o'clock tomorrow.

Yes, Mr.Fisher?

MR. FISHER: Your Honor, in that regard, what we are talking about now is the defense's contentions to be submitted with respect to that portion of your Honor's charge dealing with the marshalling of the evidence. In that regard, if your Honor please, I have and am in the process of preparing some sets, kind of a double entry system. There is the first set dealing with matters already established in the cross-examination which would not prejudice the defendant to be disclosed to the government at this time since I assume they were listening to cross-examination.

However, if your Honor please, there are other contentions which will be made in summation on my part which perhaps do not leap out and perhaps the government may not be able to anticipate at this time and I think, respectfully, your Honor, it would insure to the prejudice of the defendant to be forced to disclose such arguments at this time,not wishing, however, to lose our right to have your Honor include these arguments in your marshal-

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ling.

Therefore, if your Honor please, I would request that I be allowed to submit those contentions which I have indicated I have no objection to the government knowing tomorrow morning and with regard to a very limited number, I think two or three, I would ask permission to submit those after the case has rested on both sides.

THE COURT: Mr. Fisher, what you are looking for is instant justice and I have indicated that I intend to rule on all requests prior to summations. I believe that that is what the rule requires.

What you would like to do is remain with the last couple and say, "Okay, Judge, I'm going to start summing up, here are the last couple, give me some instant justice."

I can't do it. I am not going to do it.

MR.FISHER: I will be glad to submit the second set to your Honor in camera tomorrow morning. My only objection -- I have no objection to your Honor seeing them, of course. My only objection is disclosing to the government prior to the time they fully rest, which includes rebuttal, arguments to be made in behalf of the defendant's summation.

MR. WARNER: I have the same problem, although

unfortunately I don't have two sets. I can have the second set made up later. I will be perfectly willing and will submit the entire thing to your Honor tomorrow morning at 10, but I would ask that the government's final full copy be delayed until they have rested.

MR. CURRAN: Your Honor, of course, it is difficult to object to requests which one hasn't seen and I had assumed we had a right to object just as the defense has a right to object to ours.

THE COURT: Yes.

MR. CURRAN: I would like to explore it briefly before we respond finally, but it seems to me perhaps if we could do the same thing as defense counsel are doing, that might be agreeable to the government. Certainly we oppose any idea where they submit requests in camera and we don't.

THE COURT: In other words, you want to hold on to your rebuttal evidence without giving it away right now, is that what you are talking about?

MR. CURRAN: Partly. My point was if they want to submit theirs and we can't see them to object where we may disagree with them, we may be in the same situation ourselves.

THE COURT: Listen, if everybody is willing,

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what is good for the goose is good for the gander. I don't care. I couldn't care less, just so long as I can rely upon getting them tomorrow morning so I can get my work done.

Of course, I can't finish my work until after I hear just about everybody's summations. I have to be continually working throughout the entire period, but at least if I can get started I would appreciate it.

See you all at 10 o'clock.

(Adjourned to February 27, 1974, at 10.00 A.M.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Paul J. Curran	3750			
Walter M. Phillips, Jr.	3762	3763,3764	3770	3777
Benjamin Tolopka	3786			
Bertha Tolopka	3832 3797	3854		
John Stasio	3805	3812		
Patricia Ann Puchalski	3828			

EXHIBIT INDEX

Court	Identification	In Evidence
68	68	3779
Defendant Tolopka		
A		3789
B		3792
C		3811
D	3834	
G		3844
H	3844	
E		3852
F		3852
I		3852